dred and ninety-one thousand six hundred copies be printed, of which two hundred and nineteen thousand five hundred shall be for the use of the House of Representatives and seventy-two thousand one hundred shall be for the use of the Senate.

The concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

## PRINTING OF ADDITIONAL COPIES OF HEARINGS ACCOMPANYING THE LEGISLATIVE REORGANIZATION ACT OF 1970

Mr. DENT. Mr. Speaker, by direction of the Committee on House Administration, I submit a privileged report (Rept. No. 91–1574) on the concurrent resolution (H. Con. Res. 740), authorizing the printing of additional copies of the hearings accompanying the Legislative Reorganization Act of 1970, and ask for immediate consideration of the concurrent resolution.

The Clerk read the concurrent resolution, as follows:

H. CON. RES. 740

*Resolved by the House of Representatives (the Senate concurring)*, That there be printed for the use of the House Committee on Rules two thousand additional copies of its hearings accompanying the Legislative Reorganization Act of 1970.

With the following committee amendment:

On page 1, line 3, strike out the word "two" and insert in lieu thereof the word "three".

The SPEAKER. The gentleman from Pennsylvania is recognized.

Mr. GROSS. Mr. Speaker, will the gentleman yield?

Mr. DENT. I yield to the gentleman from Iowa.

Mr. GROSS. Does the concurrent resolution provide for a reprinting of the bill or the hearings?

Mr. DENT. The concurrent resolution provides for a reprinting of the hearings, and I might say that the need arises because of a great demand from universities, colleges, and institutions of learning for copies for their libraries.

Mr. GROSS. I am not too sure what those copies will contribute to the educational system.

The SPEAKER. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The committee amendment was agreed to.

The concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

## PRINTING OF ADDITIONAL COPIES OF HEARINGS ENTITLED "CUBA AND THE CARIBBEAN"

Mr. DENT. Mr. Speaker, by direction of the Committee on House Administration, I submit a privileged report (Rept. No. 91–1575) on the concurrent resolution (H. Con. Res. 748), authorizing the printing of additional copies of hearings entitled "Cuba and the Caribbean" for use of the Committee on Foreign Affairs, House of Representatives, and ask for immediate consideration of the concurrent resolution.

The Clerk read the concurrent resolution, as follows:

H. CON. RES. 748

*Resolved by the House of Representatives (the Senate concurring)*, That there shall be printed for the use of the Committee on Foreign Affairs, House of Representatives, one thousand five hundred additional copies of the hearings by the Subcommittee on Inter-American Affairs in July and August 1970 entitled "Cuba and the Caribbean".

The concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

## PRINTING OF ADDITIONAL COPIES OF "SUPPLEMENT TO CUMULATIVE INDEX TO PUBLICATIONS OF THE COMMITTEE ON UN-AMERICAN ACTIVITIES 1955 THROUGH 1968 (84TH THROUGH 90TH CONGRESSES)"

Mr. DENT. Mr. Speaker, by direction of the Committee on House Administration, I submit a privileged report (Rept. No. 91–1576) on the concurrent resolution (H. Con. Res. 753), authorizing the printing of additional copies of publication entitled "Supplement to Cumulative Index to Publications of the Committee on Un-American Activities 1955 through 1968 (84th through 90th Congresses)," and ask for immediate consideration of the concurrent resolution.

The Clerk read the concurrent resolution, as follows:

H. CON. RES. 753

*Resolved by the House of Representatives (the Senate concurring)*, That there shall be printed concurrently three thousand additional copies of the publication entitled "Supplement to Cumulative Index to Publications of the Committee on Un-American Activities 1955 through 1968 (Eighty-fourth through Ninetieth Congresses)" for the use of the Committee on Internal Security.

The concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

## PRINTING OF ADDITIONAL COPIES OF SENATE HEARINGS ON COPYRIGHT REVISION

Mr. DENT. Mr. Speaker, by direction of the Committee on House Administration, I submit a privileged report (Rept. No. 1577) on the Senate concurrent resolution (S. Con. Res. 81), authorizing the prinitng of additional copies of Senate hearings on Copyright Law Revision—S. 597, 90th Congress—and ask for immediate consideration of the Senate concurrent resolution.

The Clerk read the Senate concurrent resolution, as follows:

C. CON. RES 81

*Resolved by the Senate (the House of Representatives concurring)*, That there be printed for the use of the Senate Committee on the Judiciary two thousand additional copies of parts 1, 2, 3, 4, and index of the hearings before its Subcommittee on Patents, Trademarks, and Copyrights during the Ninetieth Congress on Copyright Law Revision (S. 597).

The Senate concurrent resolution was concurred in.

A motion to reconsider was laid on the table.

## PRINTING OF ADDITIONAL COPIES OF "ANATOMY OF A REVOLUTIONARY MOVEMENT: 'STUDENTS FOR A DEMOCRATIC SOCIETY'"

Mr. DENT. Mr. Speaker, by direction of the Committee on House Administration, I submit a privileged report (Rept. No. 91–1578) on the concurrent resolution (H. Con. Res. 770) authorizing the printing of additional copies of "Anatomy of a Revolutionary Movement, 'Students for a Democratic Society,'" 91st Congress, second session.

The Clerk read the concurrent resolution as follows:

H. CON. RES. 770

*Resolved by the House of Representatives (the Senate concurring)*, That there shall be printed for the use of the Committee on Internal Security 5,000 additional copies of the report entitled "Anatomy of a Revolutionary Movement: 'Students for a Democratic Society,'", 91st Congress, second session.

The concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

## PERSONAL ANNOUNCEMENT

(Mr. DULSKI asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DULSKI. Mr. Speaker, I was absent on official business and missed two rollcall votes. Had I been present and voting I would have voted "yea" on rollcalls No. 326 and No. 327.

## HOUSE COMMITTEE ON ADMINISTRATION UNANIMOUSLY APPROVED RESOLUTIONS

(Mr. SCHWENGEL asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.)

Mr. SCHWENGEL. Mr. Speaker, as a member of the House Administration Committee I want to emphasize that the printing resolutions brought to the House today for approval were unanimously cleared by our committee and that they include very worthwhile and useful items.

House Concurrent Resolution 732 is to reprint copies of "The Pledge of Allegiance to the Flag." It is to me highly encouraging that this publication is so popular. At the modest cost of $6,228.06, the resolution will provide 219,500 copies of the Pledge for distribution. What better investment could we possibly make to stimulate reverence and respect for the flag of our Nation.

It is encouraging also to report to the House that the committee approved and has brought before the House a resolution to reprint 3,000 copies of the Rules Committee hearings on the Legislative Reorganization Act. This is landmark legislation and is much needed to update congressional procedures. The other body, as I am sure all of you know, yes-

terday, October 6, approved the House-passed reorganization bill without major amendment affecting the House, so this bill stands an excellent chance of becoming law soon. The hearings we have authorized to be printed today will be an invaluable and timely reference on congressional reorganization among interested citizens and scholars.

There are three measures to authorize reprinting of publications of the Internal Security Committee. One is the 1969 annual report. One is the cumulative index to that committee's publication covering the years 1955 through 1968. The index was last updated in 1960. The other is the report "Anatomy of a Revolutionary Movement: 'Students for a Democratic Society,'" which traces the history of the movement. All of these are of continuing interest but are especially significant during these times because of the insidious forces at work which are attempting to undermine our society and our freedoms.

Another resolution approved by the House today is to reprint Foreign Affairs Committee hearings entitled "Cuba and the Caribbean," hearings which were held in July and August of this year. Because of the strategic importance of Cuba to the security and welfare of the entire Western Hemisphere there is naturally a great interest in these hearings. The remaining measure is to authorize reprints of additional copies of Senate hearings on copyright law revision. This Senate resolution has been passed by the other body and House concurrence is required.

## CALL OF THE HOUSE

Mr. PELLY. Mr. Speaker, I make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

Mr. ALBERT. Mr. Speaker, I move a call of the House.

A call of the House was ordered.

The Clerk called the roll, and the following Members failed to answer to their names:

[Roll No. 331]

| | | |
|---|---|---|
| Abbitt | Feighan | Nedzi |
| Adair | Fisher | O'Konski |
| Addabbo | Flynt | O'Neal, Ga. |
| Alexander | Foreman | Ottinger |
| Aspinall | Frelinghuysen | Patman |
| Beall, Md. | Fulton, Tenn. | Pirnie |
| Berry | Gallagher | Pollock |
| Betts | Gilbert | Powell |
| Blackburn | Goldwater | Pryor, Ark. |
| Blatnik | Gubser | Purcell |
| Brock | Haley | Rees |
| Brooks | Hanna | Reid, N.Y. |
| Burlison, Mo. | Harrington | Reifel |
| Burton, Utah | Harvey | Rooney, Pa. |
| Bush | Hébert | Roudebush |
| Button | Heckler, Mass. | Ruppe |
| Cabell | Helstoski | Satterfield |
| Clark | Jarman | Scott |
| Clawson, Del | Jonas | Snyder |
| Clay | Jones, N.C. | Steiger, Wis. |
| Conte | Landrum | Stephens |
| Corbett | Leggett | Stokes |
| Cowger | Lowenstein | Stratton |
| Daddario | Lujan | Stuckey |
| Dawson | Lukens | Taft |
| de la Garza | McCarthy | Thompson, N.J. |
| Derwinski | McClory | Tiernan |
| Dickinson | McMillan | Tunney |
| Dowdy | Meskill | Whitehurst |
| Edwards, La. | Mollohan | Wold |
| Esch | Morgan | Wyatt |
| Evins, Tenn. | Morse | Young |

The SPEAKER. On this rollcall 333 Members have answered to their names, a quorum.

By unanimous consent, further proceedings under the call were dispensed with.

## PERMISSION TO FILE CONFERENCE REPORT ON MILITARY CONSTRUCTION BILL UNTIL MIDNIGHT, FRIDAY, OCTOBER 9

Mr. RIVERS. Mr. Speaker, I ask unanimous consent that the managers on the part of the House have until midnight Friday, October 9, to file a conference report on H.R. 17604, the Military Construction Act.

The SPEAKER. Is there objection to the request of the gentleman from South Carolina?

There was no objection.

(Mr. FULTON of Pennsylvania asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.)

[Mr. FULTON of Pennsylvania addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

(Mrs. GREEN of Oregon asked and was given permission to address the House for 1 minute, to revise and extend her remarks and include extraneous matter.)

[Mrs. GREEN of Oregon addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.]

## ORGANIZED CRIME CONTROL ACT OF 1970

Mr. CELLER. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (S. 30) relating to the control of organized crime in the United States.

The SPEAKER. The question is on the motion offered by the gentleman from New York.

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill S. 30, with Mr. ROONEY of New York in the Chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee rose on yesterday, the gentleman from New York (Mr. CELLER) had 12 minutes remaining, and the gentleman from Ohio (Mr. MCCULLOCH) had 50 minutes remaining.

Before the Committee rose the gentleman from Texas (Mr. ECKHARDT) had the floor, and the gentleman from Texas has 1 minute remaining and is recognized at this time.

Mr. CELLER. Mr. Chairman, I yield the gentleman an additional 3 minutes.

Mr. ECKHARDT. Mr. Chairman, S. 30, the crime bill, is a fraud upon the public as time will prove. It is a monster. I make these statements with the utmost respect for the distinguished Committee on the Judiciary and its respected chairman, EMANUEL CELLER.

The committee contains some of the most effective and able lawyers in the House. For instance, the gentleman from Virginia (Mr. POFF) is a man who is very learned in the law, as I have frequently observed in colloquy on the floor. But he has exercised his great expertise frequently to walk with exquisite precision on the very outside borders of the Constitution. I think he has in this case overstepped.

The chairman of the committee is indeed a man who has more respect, I think, for the constitutional process than most any Member of this House—a man who is devoted to drawing legislation which is practical and effective. I recognize that with what he had, he did his best. I recognize the same qualities in the capable ranking minority member, the gentleman from Ohio (Mr. MCCULLOCH).

But, after all, the chairman was merely the obstretrician who brought this bill to light. He had nothing to do with its genetic constitution.

To adapt the words of Edmund in King Lear—this bill was got 'tween sleep and wake, in the dull, stale, tired bed of the Justice Department.

It lulls the public into a feeling of false security when considered in light of those uncertainties introduced by its unconstitutional provisions; its overloading of the Federal courts by moving large substantive areas of criminal law, formerly totally within the police power of the State, into the Federal realm; its new authority to harass police and law-enforcement authority by meddlesome or even politically motivated special grand juries authorized to probe public officials' admittedly legal activities.

When all of these considerations are taken into account, the bill is a backward step.

It is always popular to offer cheap solutions to difficult public questions. It is quite cheap in money to merely increase penalties, to expedite conviction by shortcutting due process and shortcropping the right of trial by jury. But in the long run it is the most expensive course we can take, because if it were upheld, it would be bought at the cost of validity and respect for law.

I am most concerned, as I think some of my colleagues have observed, about what is called the dangerous special offender provisions of this bill and of the drug bill. It is found in this bill in title X. I would like to say a little about it because one must know what it means to know precisely how it removes from the consideration of the jury a very serious element of what you may either call crime, as I prefer to call it, or you may call status of "dangerous special offender," as the author of this provision, the gentleman from Virginia (Mr. POFF), prefers to call it. But I think whatever you call it you must come to the same conclusion as to how the offense—or the status if you prefer—is to be proved if the act is to stand constitutional muster.

A person accused of factual elements

of the crime, or that which justifies a sentence—and I know no difference between those terms—a person so accused under American law, and under English law before us, was entitled to have a trial before a jury in all cases of serious offenses. That, of course, has been so clearly established by the Supreme Court in Duncan against Louisiana in recent times that it can no longer be brought into contest—except for the fact that I suppose everything can be brought into contest today.

I have tried a case before a justice of the peace who, at the beginning of the trial, simply remained mute, and after a long period of time he said:

Mr. Eckhardt, proceed to defend your client.

I asked:

If Your Honor please, will you instruct the jury that he must be held not guilty?

He replied:

Well, Mr. Eckhardt, I understand the law to be that a man is guilty until he proves his self innocent.

I was free to admit that I had not briefed that point for that case, but would later give the authority.

I had not thought I would have to argue this question to the Attorney General of the United States.

The Poff amendment, the dangerous special offender provision of S. 30, operates this way:

If the prosecuting attorney intends to ask for enhanced sentencing, he gives a notice in advance and he makes the allegation that the defendant is a dangerout special offender who, upon conviction, is subject to enhanced sentencing and, in addition, he sets out with particularity the reasons why he feels the defendant to be a dangerous special offender.

If the defendant is convicted of a felony, after such notice has been properly given, the court, sitting without a jury, holds a presentencing hearing which may be based upon a report compiled by a probation officer. The report itself would necessarily be constituted, in major part, of the hearsay testimony of various persons from whose statement is has been compiled. Also, it could be a mixture of statements of alleged facts, opinions, innuendo, and inflammatory material relative to the offense upon which the defendant was found guilty by the jury.

Somewhat ameliorating these infirmities of the report are the following assurances to the defendant:

First, his counsel may, except in extraordinary cases, inspect the report sufficiently prior to the hearing as to afford a reasonable opportunity for verification of the facts recited therein:

Second, he is afforded compulsory process to bring in as witnesses persons whose hearsay testimony appears in the report, persons who would refute the report, or other persons who might give material evidence; and

Third, he is afforded the right to cross-examination of such witnesses as appear.

These protections are inferior, however, to the protection he would receive if the case were tried before the court, mainly because of the fact that he is not entitled to a jury to determine whether or not the facts are valid. But in addition the following infirmities also exist:

First, the prosecutor does not have to elect whether or not to use a witness the disclosure of whose identity would make him useless in the future as an informer or would endanger him, or to use testimony which might seriously disrupt a program of rehabilitation.

This is because, in what is called "extraordinary cases," the court may protect confidential sources of information. This would, of course, deny to the defendant the right of cross-examination as well as the right of jury trial.

Second, the defendant is at the mercy of the judge's determination as to what material is not relevant to a proper sentence, and although this question may be carried forward into an appeal, as I understand it, the actual material may continue to be considered in camera by the courts.

Third, the defendant has the tremendous practical disadvantage of having to go forward with the burden of obtaining firsthand testimony and of bringing in live witnesses to test or to refute material which may be easily brought in against him in the report.

In this way the act permits the court to hold, contrary to long-established English and American law, that a person is guilty upon the basis of the report until he proves himself innocent. Such result is also found in the provision that requires a person to carry the burden of proof that certain earnings were not earned as the fruits of a criminal enterprise in which he is said to have engaged.

I think, that the dangerous criminal offender title of the bill is unconstitutional because it deprives the defendant of trial by jury in a serious criminal case. An offense containing additional elements and carrying a higher penalty is to be proved under title X in a hearing before a judge without a jury and without adequate safeguards of due process, confrontation, and cross-examination. It is clear that this does not comport with the sixth amendment that provides, with respect to Federal criminal prosecutions:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed.

I cannot vote for this bill when it contains patently unconstitutional provisions because I swore when I was seated in this House to support and defend the Constitution. Every one of us is as much under that duty as is a member of the Supreme Court.

Of course, this flaw may be eliminated, and will be eliminated, at either one or the other of two stages of the government process: in Congress or in the courts. I have no doubt at all that it will be eliminated because, as I have said, it is absolutely clear that the denial of jury trial in this way is unconstitutional.

I urge my colleagues to correct the flaw here at this stags for two reasons:

First. Because you and I are under a duty by our oaths of office to uphold the Constitution, and

Second. The flaw should be corrected at a time when it will be doing the least harm to the enforcement of criminal law.

I have heard it argued on this floor that if a law is unconstitutional the Supreme Court will correct it, that we need not worry about it, that we should press as far as we can toward the general objective of the statute and let the Supreme Court worry about unconstitutionality. Let me tell you what is wrong with that argument:

There is a grave and important difference and result if the constitutional language is stricken at the court level, particularly in the field of criminal law. In order to correct the constitutional defect the court must take action in a specific case by reversing a conviction of a person who is at least potentially a dangerous criminal.

This defect is particularly present in this case. The dangerous criminal offender is a person who has been convicted of one crime. He is sought to be sentenced, in effect, upon another. The fact that the statute is brought into play indicates that he is, at least arguably, a dangerous offender, a person engaged in organized crime. The chances are that he could be convicted under existing law either as a habitual criminal or as one quilty of an extremely serious crime carrying a high sentence. But the prosecutor has been tempted by title X to convict him of any felony, like that of passing of a marihuana cigarette with a maximum 5-year penalty, because it is thought that the sentence can be enhanced to 25 years.

When many people are tried under the theory of title X, sentenced to up to 25 years and then the court strikes down the provision under which they are sentenced, these persons are either freed or left subject only to a light sentence. This is the danger of delaying a determination that title X is unconstitutional. This is the danger of shirking our duty and passing it on to the Supreme Court.

Mr. PODELL. Mr. Chairman, will the gentleman yield?

Mr. ECKHARDT. I yield to the gentleman from New York.

(Mr. PODELL asked and was given permission to revise and extend his remarks.)

Mr. PODELL. Mr. Chairman, today this House must make an exceedingly difficult decision. It must take a stand on one of the most controversial measures to come before Congress this session—the Organized Crime Control Act, S. 30. It is a measure that passed the Senate overwhelmingly last January, and yet it shows serious disregard for constitutional and procedural safeguards which form the cornerstone of our system of justice.

The bill recognizes that organized crime poses a serious threat to life in a free society. It recognizes that prosecutors seeking to curb its influence have been frustrated in their efforts to convict these people who live as parasites on our society—feeding on the weaknesses of others.

There are some provisions that do provide some effective tools to combat

the problem. There are provisions for handling grand juries; money is authorized for the protection of Federal witnesses; there are provisions for possible civil remedies in the antitrust field which may allow for easier convictions.

But just as S. 30 goes some way toward dealing with the challenges that organized crime poses to a free society, so it seriously impairs many of the rights that actually make up the definition of a "free society." The question we must answer then is how much, if any, tradeoff is desirable? We are now faced with the age-old problem of determining whether the means justify the ends. And here we do not even know whether these means, if enacted, would actually achieve the desired ends; that is, the decrease of organized crime in our society.

If organized crime is known to prey on millions of innocent people, does it follow that we give the Government the tools to attack individual privacy and the concept of due process—even of the innocent? Should we determine ahead of time that because there is a possibility that an individual may be guilty that he should be written off the roles of individuals protected by our Constitution? Do we assume that the innocent do not require such safeguards and rights? I say "no" to all these questions. Such infringement endangers both the innocent and the guilty.

The section of the bill that best typifies the dangers that I am warning against is title VII. This section would limit in all Federal and State civil and criminal proceedings disclosure of information illegally obtained—through wiretapping—or from testimony compelled under grant of immunity to those defendants seeking to challenge the admissibility of the evidence in question. Also, it would prohibit any challenge on the admissibility of this evidence if the gathering of the information occurred more than 5 years before the crime was committed.

In other words, if the wiretapping occurred before June 1968, and an individual committed an offense 5 years later, the defendant would not be permitted to challenge the admissibility of the evidence based on its being the fruit of an unlawful Government act.

This provision then puts a timetable on the protection that our Constitution affords the individual. It establishes a statute of limitations on the provisions of the Constitution. The American Bar Association of New York said:

> Of all the proposals contained in S. 30, we believe that Title VII is the most ill-conceived. Indeed, the very purposes of the Title and its purported justifications are antithetical to due process concepts and the rule of law.

I believe that title VII should be stricken from this bill.

Also contained within the bill is a provision that special grand juries have the right to issue reports on noncriminal matters. For example, if the grand jury heard and considered evidence of purported organized criminal activity of an individual, and found that there was insufficient evidence to warrant an indictment, it could issue a report of findings of noncriminal misconduct by the individual. And yet the person who is the subject of the report would have a chance to offer his side only after the report was written.

Title X of the bill seems to be a violation of the due process of law. It says:

> If it appears by a *preponderance of evidence* that the defendant is a dangerous special offender, the court shall sentence the defendant to imprisonment for an appropriate term not to exceed 25 years.

This is using a lesser standard of evidence, a civil standard, in a criminal proceeding. Other serious objections can be raised about the title, including the looseness of the definitions involved, but this fact forms the heart of my objections.

The court is seriously endangering the rights of the individual by adding on a penalty of this nature using this standard of evidence.

Our former Attorney General, Ramsey Clark, talking of crime prevention measures, said:

> Crime is not controlled by wiretapping. Rather it undermines the confidence of people in their own government. In the long run, it demeans human dignity.

These are strong words and convey a sense of the problem we face today.

It is true that crime is the No. 1 domestic problem facing this Nation today. Our citizens have the right to live their lives free from fear and safe from harassment by criminals. Yet, we must safeguard another set of freedoms and rights in the process. We must make certain that the rights outlined in our bill of rights—which form the basis for the freedom and liberty this country has known—are not infringed upon. In acting today, let us not infringe upon one freedom to bring about another.

Our President, in a letter to congressional leaders dated May 2, 1970 said:

> We damage respect for law, we feed cynical attitudes toward law, when we ride roughshod over any law, let alone any constitutional provision because we are impatient to achieve our purposes. To pass a popular measure despite the constitutional prohibition, and then to throw on the court the burden of declaring it unconstitutional, is to place a greater strain and burden on the court than the founding fathers intended, or than the court should have to sustain.

Perhaps the Congress should act to assure that the President will practice what he preaches.

Mr. McCULLOCH. Mr. Chairman, I yield 3 minutes to the gentleman from Virginia (Mr. POFF).

(Mr. POFF asked and was given permission to revise and extend his remarks.)

Mr. POFF. Mr. Chairman, I take this time in order to explain in more definitive detail the titles of the bill seriatim.

Mr. EDMONDSON. Mr. Chairman, will the gentleman yield to me?

Mr. POFF. I am glad to yield to the gentleman from Oklahoma (Mr. EDMONDSON).

Mr. EDMONDSON. The last sentence under section 846 of title XI states:

> In addition to any other investigatory authority they have with respect to violations of provisions of this chapter, the Attorney General and the Federal Bureau of Investigation, together with the Secretary (of the Treasury), shall have authority to conduct investigations with respect to violations of subsection (d), (e), (f), (g), (h), or (i) of section 844 of this title.

This appears to give overlapping jurisdiction and could result only in duplication of effort and possible confusion. What agency really is intended to have primary jurisdiction over subsections (d) through (i)?

Mr. POFF. Mr. Chairman, I call the gentleman's attention to the sentence immediately preceding the sentence quoted, which reads as follows:

> Nothing in this chapter shall be construed as modifying or otherwise affecting in any way the investigative authority of any other Federal agency.

The criminal provisions of section 844, subsections (d) through (i), perpetuate and expand existing provisions under section 837, title 18, United States Code, which will be repealed by this bill. The FBI presently has primary jurisdiction over section 837 of title 18, and it is the intent of Congress to continue this primary jurisdiction over subsections (d) through (i) of section 844.

The Department of the Treasury was brought into this matter merely to perpetuate the limited jurisdiction that Department now has under chapter 44, sections 921–928, title 18, dealing with the unlawful possession or receipt of firearms and destructive devices, including explosives, bombs, and incendiaries. The Alcohol, Tobacco Tax and Firearms Division of the Department of the Treasury exercises that jurisdiction and will continue to do so under this legislation. But its jurisdiction in this respect is not expanded by this legislation, nor is it the intent to give it concurrent jurisdiction with the FBI.

The Department of the Treasury does, however, have primary jurisdiction over the regulatory provisions of title XI of this bill, and I think this is clearly stated in the bill.

Mr. EDMONDSON. I thank the gentleman.

Mr. POFF. Mr. Chairman, it is important to understand the full context of each title of this bill.

TITLE I—SPECIAL GRAND JURY

Mr. Chairman, title I of S. 30 establishes special grand juries in the major metropolitan areas of the Nation lying in judicial districts having in excess of 4 million inhabitants. This would include these districts: Massachusetts, the eastern and southern district of New York, New Jersey, the eastern and western districts of Pennsylvania, the southern district of Florida, the eastern district of Michigan, the northern and southern district of Ohio, the northern district of Illinois, and the northern and southern districts of California. When the Attorney General determines a need in other districts, based upon organized crime activities in the district, special grand juries will be convened on a case-by-case basis. The district court of its own volition may also order an additional special grand jury impaneled when the volume of business requires it. These special grand juries will meet at least once in every 18-month period. They will ordinarily serve for an 18-month term, subject to

extension as necessary for the completion of their business so long as the total time served does not exceed 36 months.

Because it has been deemed advisable to give the special grand juries, whose function it is to inquire into sensitive organized crime activities, a degree of autonomy beyond that enjoyed by grand juries generally, the bill provides that when a district court fails to extend a grand jury's term upon its request or discharges it before it has completed its business, the district judge's decision may be appealed to the chief judge of the circuit court by the grand jury upon a majority vote by its mebers. The special grand jury will continue to sit pending review of the distrct court's acton. The provision will assure against the dismissal of a special grand jury conducting an organized crime investigation prior to the completion of its work.

In addition to rendering indictments, the special grand juries upon the completion of their terms, or extensions thereof, are expressly authorized to file reports, first, on organized crime conditions in their districts; and, second, on the apparent noncriminal misconduct in office of appointed public officials, where an alleged misfeasance or malfeasance relates in some way to organized criminal activities, as the basis for a recommendation of removal or disciplinary action. Where the reports concern public officers, the persons named in the report are afforded a number of safeguards to protect them against unjustified prejudicial action. The protections afforded include the right to appear and summon witnesses before the grand jury prior to the filing of its report, and an opportunity to file an answer which will be attached to the report. The report will not be accepted by the court, or filed as a public record unless the court is satisfied that any public officer named therein has been accorded these privileges, and unless the court finds that the report is supported by a preponderance of the evidence heard by the special grand jury. Prior to publication of the report, a person named therein or affected by it will also have a right of review in the circuit court of appeals. Reports which reflect organized crime conditions in the community must be confined to general observations based upon the facts revealed in the course of authorized criminal investigations—they may not be critical of identified individuals.

These provisions carry out several important recommendations of the President's Commission on Law Enforcement and the Administration of Justice. The Commission recommended that at least one investigative grand jury be impaneled annually in each jurisdiction that has major organized crime activity, and that the grand jury's term be extended whenever it can show that its business remains unfinished at the end of a normal term. The Commission also suggested that judicial dismissal of grand juries with unfinished business should be appealable to a higher court, and that provision should be made for suspension of the dismissal pending the appeal, since the possibility of arbitrary termination of a grand jury by a supervisory judge would constitute a danger to successful completion of an investigation. The Commission further recommended that when a grand jury terminates, it should be permitted by law to file public reports regarding organized crime conditions in the community—report, "The Challenge of Crime in a Free Society," page 200.

The experience of Federal prosecuting attorneys attests the validity of the Commission's recommendations. Thomas J. McKeon, who served as a special assistant in charge of a Federal strike force formed in Detroit, Mich., in February 1968, has emphasized the importance of the grand jury to an organized crime investigation. In an article, entitled "The Strike Force" published in the American Bar Association Journal, May 1970, Mr. McKeon recounts the operations of this highly successful unit. With reference to the role of the grand jury, Mr. McKeon says:

> A twenty-three member special federal grand jury was impaneled in Detroit through the cooperation of the chief judge and the entire bench of the district court to sit for an eighteen-month period. Regular federal grand juries usually sit for six consecutive months, and then a new grand jury is impaneled. Organized crime investigations are complex, and an investigation exceeding six months is more the rule than the exception. Therefore, the prospective grand jurors were put on notice by the chief judge that they would sit for the full eighteen-month period.
>
> Over this period and prior to their discharge on September 3, 1969, the grand jury returned forty-nine indictments charging a total of 101 defendants with various federal violations. The indictments ranged from income tax evasion, perjury, counterfeiting, interstate and international gambling, and conspiracy to the smuggling of narcotics and jewels, thefts from interstate commerce, illegal importation of aliens, embezzlement, extortionate loan sharking, sale, possession and illegal transportation of firearms, false ownership of bars, conspiracy to transport obscene matters in foreign commerce, and the deprivation of the rights of union members by the use of force and violence. The grand jurors sat biweekly in one to four-day sessions and heard testimony from hundreds of witnesses. (*Supra*, Vol. 56: 455)

While the primary function of a grand jury is to indict, and the special grand juries which are authorized by title I will be summoned only as required to inquire into alleged violations of Federal criminal laws; as I have indicated, they will also be authorized to report upon organized crime conditions as they find them. Through the exercise of its reporting function the grand jury is capable of performing an invaluable service in alerting the community to the threat posed by the criminal syndicates.

Law-enforcement authorities assert that without sustained public pressure, programs to combat the evil of organized crime have little likelihood of lasting success. Sporadic attempts have been made to focus concentration upon the activities of the criminal syndicates since 1951, when the Kefauver committee first alerted the Nation to the extent of their penetration into our society. But today, as in the past, much of the public does not see or understand the effects of organized crime in society. Moreover, what the public does see and read is often serious misleading. Information about members of criminal syndicates tends to be presented in a sensational manner with liberal use of gangster terminology. Moreover, an emphasis upon reports of gangland killings unfortunately tends to give the impression that mobsters are primarily involved in killing each other. Prof. Donald R. Cressey, a consultant on the President's Task Force on Organized Crime, says:

> The public will not be "educated" about organized crime until it understands that organized criminals prey on the economic and political order, not on each other. (Cressey, *Theft of a Nation*, p. 67.)

Fortunately, the menace of organized crime is receiving more and more exposure through the efforts of citizen groups such as the U.S. Chamber of Commerce which makes available to businessmen through its local chapters a desk book on organized crime, alerting them to symptoms which indicate that the syndicates may be infiltrating their communities and their businesses, and advising them as to what steps may be taken to prevent its penetration. But we still have a long way to go. The publication of grand jury reports on organized criminal activities, and on the enforcement or lack of enforcement of the criminal laws by rsponsible public officials, can be helpful in this respect, as is indicated by experience in States such as New York and New Jersey in which such reports have long been authorized by either statute or case law.

The authority of regular Federal grand juries to issue reports such as title I contemplates is unclear under existing law. Whereas the release of reports by grand juries at the end of their terms is common practice in some districts, the matter rests upon precedent and the court's discretion rather than upon statute. The U.S. Supreme Court has indicated that Federal grand juries, like their early English and colonial predecessors, may issue reports as well as render indictments—see, for example, *Hannah* v. *Larche*, 363 U.S. 420, 449 (1960); *Jenkins* v. *McKeithen*, 395 U.S. 411, 430 (1969)—but the precise boundaries of the reporting power have not been judicially delineated. For this reason, the authority to issue reports relevant to organized crime investigations has been specifically conferred upon the special grand juries created by this title. The committee does not thereby intend to restrict or in any way interfere with the right of regular Federal grand juries to issue reports as recognized by judicial custom and tradition. Nor does it intend to restrict the right of special grand juries to issue reports of such a nature. The provision included in title I as it was passed by the Senate which expressly authorized special grand jury reports proposing recommendations of a general nature for legislative or administrative action has been deleted by the Judiciary Committee as unnecessary, since existing law already permits such reports by grand juries. See, for example, *Application of United Electrical Radio and Machine Workers*, 111 F. Supp 858 (S.D. N.Y.). Although the title as reported by the Judiciary Committee is shorter than the Senate version, its vital features have been retained.

TITLE II—GENERAL IMMUNITY

Mr. Chairman, title II of S. 30 replaces some 50 Federal immunity statutes now in use with a single, comprehensive provision to be added to title 18 of the United States Code, to govern grants of immunity in judicial, administrative, and congressional proceedings. As you know, the President's Crime Commission recommended that legislative action be taken regarding immunity for grand jury and court proceedings, and, at the suggestion of the National Commission on the Reform of Federal Criminals Laws, title II has been made to deal comprehensively with the overall problem of immunity grants to facilitate the operations of the three branches of Government. The very fact that this highly significant subject matter is to be treated in a single part of the United States Code, rather than in 50-some different and scattered provisions, should prove of considerable benefit.

Title II marks a notable departure from existing legislation on immunity. Whereas existing legislation has gone beyond the breadth of the fifth amendment privilege by granting transaction immunity—by barring prosecution completely in respect to incriminating testimony given—title II creates a restriction on the direct or indirect use of the compelled testimony; such testimony may not be used in any way in developing a prosecution of the witness for any of his past offenses—he will not be forced directly or indirectly to be a witness against himself—but prosecution itself will not absolutely be barred. You will recall that the President in his message on organized crime commended to the Congress the basic concept of title II. Specifically, he said:

I commend to the Congress for its consideration . . . [the proposal under which] a witness could not be prosecuted on the basis of anything he said while testifying, but he would not be immune from prosecution based on other evidence of his offense.

I might add, Mr. Chairman, that the use-restriction immunity is clearly constitutional, taking note particularly of two 1964 Supreme Court decisions, *Malloy* v. *Hogan*, 378 U.S. 1, and *Murphy* v. *Waterfront Commission*, 378 U.S. 52. On the subject of granting immunity in general, I think it very fitting to repeat a comment made in an 1896 Supreme Court opinion:

Every good citizen is bound to aid in the enforcement of the law, and has no right to permit himself, under the pretext of shielding his own good name to be made the tool of others who are desirous of seeking shelter behind his privilege (*Brown* v. *Walker*, 161 U.S. 591, at 605).

Mr. Chairman, the Omnibus Crime Control and Safe Streets Act of 1968 enlarged the bases for grants of immunity: they were to be available in a greater number of proceedings than previously—proceedings involving a greater number of offenses. But title II of S. 30 is not limited to investigations involving any particular Federal violations. Nonetheless, for the Department of Justice and the various administrative agencies, the Attorney General must approve use of the immunity provisions, so that this vary important matter of immunizing witnesses will be closely controlled. No longer will any witness automatically receive immunity under statutes that title II will repeal; the witness must always claim his privilege against self-incrimination before immunity will be granted. This eliminates a danger that a witness will be immunized by some oblique testimony relative to a criminal transaction automatically—without any claim of privilege—and hence without forethought being given to the matter by the Government. As Justice White wrote in a concurring opinion in Murphy against Waterfront Commission:

Immunity must be as broad as, but not harmfully and wastefully broader than, the privilege against self-incrimination (at 378 U.S. 107).

Where the witness is before either House of Congress, a grant of immunity must be approved by a majority vote of the Members present, and where the witness is before a joint committee or a committee or subcommittee of either House, an affirmative vote of two-thirds of the full membership of the committee is required. But any such intention to seek an order to compel testimony is to be brought to the attention of the Attorney General at least 10 days before the order is sought, and the title provides that the district court shall defer the issuance of an order up to 20 days as the Attorney General may request. This procedure will allow for studied consultation and a weighing of the value and possible consequences of immunizing a particular witness, which procedure is, I believe, an appropriate means of protecting the overriding public interest regarding grants of immunity.

Mr. Chairman, title II of S. 30 arms the Government with an ability, unique in the history of this Nation, to crack the shell of secrecy surrounding organized crime. While giving the witness all that is guaranteed him under the Constitution, title II means that a witness can no longer invoke a privilege of self-incrimination frivolously or in order to shield other parties and expect the Government to be impotent in the face of such conduct. Afforded the immunity to which he has every right, the witness will have to discharge his civic responsibilities or face sanctions under title III of this legislation.

TITLE III—RECALCITRANT WITNESSES

Mr. Chairman, there is no simple solution to the critical problem of securing testimony of witnesses who are loath to cooperate with the Government. The comprehensive immunity provision in S. 30 will not entirely solve the problem. Some witnesses can be expected to refuse to testify even after being immunized from prosecution. The law must provide sanctions for dealing with such recalcitrant witnesses. Title III of S. 30 provides such sanctions.

Courts have traditionally enforced their orders through the exercise of a contempt power. A judge may punish a witness—find a witness in criminal contempt—if he wrongfully refuses to testify or otherwise engages in contumacious conduct. Such a witness may be imprisoned for a certain period of time as vindication of the court's authority. If the contemptuous witness is to be imprisoned for more than 6-months, he should be accorded a jury trial, but, otherwise, he may be imprisoned summarily by the court.

The civil contempt power, on the other hand, is not exercised to punish. A witness who wrongfully refuses to testify and is found in civil contempt of the court is confined for the purpose of inducing his obedience to the court's order, and when he obeys the order he is entitled to his release from custody. As is often said, a witness confined for civil contempt carries "the keys of the prison in his own pocket." Underscoring the civil nature of the sanction is the rule that, upon the termination of the proceedings at which the witness was ordered to testify, the witness is entitled to his release because he could no longer obey the court's order if he wished to do so. Thus, confinement for civil contempt for refusal to testify before a grand jury cannot extend beyond the life of the grand jury, although the witness may be imprisoned again if he contemptuously refuses to testify before a successor grand jury.

Title III of S. 30 seeks to codify the present law on civil contempt as it pertains to a witness' refusal to testify before a grand jury or court, or in proceedings ancillary thereto, in violation of a court order. In the face of such defiance, the court is explicitly authorized summarily to confine the witness, and so that the force of this sanction will not be dissipated, the committee has provided that the witness will not be admitted to bail pending the determination of an appeal unless he can show, and the burden is on him, that the appeal is not frivolous or taken for purposes of delay. It is contemplated, in view of the civil nature of the proceedings, that persons defying court orders will not ordinarily be admitted to bail and that such a person should bear the full burden of demonstrating that his appeal is not frivolous or taken for delay. To this degree, title III differs from rule 46 of the Federal Rules of Criminal Procedure. The title further provides that all appeals from civil contempt orders are to be disposed of as soon as practicable and at least within 30 days of the filing. No period of confinement may last beyond the life or the court proceedings or of the grand jury, including extensions of its original term. The committee has provided that confinement may not exceed 18 months in any event—a limitation that is considered in keeping with the civil nature of the contempt and the object of inducing obedience to the order. Obviously, the 18 months is to run from the date of the confinement for the contemptuous refusal.

Mr. Chairman, title III also amends section 1073 of title 18 of the United States Code, which is entitled "Flight To Avoid Prosecution or Giving Testimony." The statute now supplies a jurisdictional basis for Federal law enforcement personnel to apprehend individuals who flee in order to avoid prosecution, or punishment or the duty to testify in criminal proceedings in the several States. Under the amendment, the statute would be

made applicable to witnesses who flee in order to avoid testifying before State agencies authorized to investigate criminal proceedings or service of process by such agencies. This provision should certainly strengthen the hand of the States in their efforts to combat organized crime. At present, a witness might feel fairly secure in fleeing the jurisdiction after being subpenaed to testify before a State investigating commission, thinking that he would not likely be apprehended and extradited; but, under title III, such a witness could be arrested by the FBI for unlawful flight and would thus face a much more certain punishment.

Mr. Chairman, once a witness has been granted immunity protection, his continued refusal to cooperate with the Government should not be tolerated, and there have to be means available for imposing sanctions upon recalcitrant witnesses, hopefully to secure their cooperation but at least to set an example for others. Title III is an essential part of comprehensive legislation aimed at defeating organized crime and, I believe, readily commends itself to approval by this House.

TITLE IV—FALSE DECLARATIONS

Mr. Chairman, title IV creates a new Federal false-statements offense for grand jury and court proceedings which will not be subject to the artificial and anachronistic evidentiary rules that hamper perjury prosecutions in our courts. At present, Federal law imposes upon perjury prosecutions the so-called two-witness rule and the direct evidence rule which respectively require special corroboration of the testimony of the prosecution's chief witness and prevent a conviction from being based upon circumstantial as opposed to direct evidence. Moreover, under existing perjury law it is impossible to convict a witness who has made two irreconcilably contradictory statements unless the Government is able to establish by extrinsic evidence which of the two contradictory statements was false.

The President's Commission on Law Enforcement and the Administration of Justice, upon examining State and Federal perjury statutes, concluded that the criminal law must offer more effective deterrents against false statements, particularly in organized crime prosecutions where fabricated testimony so often defeats convictions. The Commission recommended that—

> Congress and the States should abolish the rigid two-witness and direct evidence rules in perjury prosecutions although maintaining the requirement of proving an intentional false statement. (Report, "The Challenge of Crime in a Free Society," p. 141.)

The integrity of the criminal trial depends upon the power to compel truthful testimony and to punish falsehood. Witness immunity such as title II will provide can be an effective prosecutive weapon only if the immunized witness testifies truthfully. The infrequency of the use of perjury sanctions—due to the difficulty of securing convictions under existing law—has limited the effectiveness of established criminal sanctions for false statements under oath. Using available Federal figures, Senator McCLELLAN'S Subcommittee on the Criminal Laws determined that only 52.7 percent of the defendants in perjury cases were found guilty over the 10-year period from 1956 through 1965, while during the same period in all other criminal cases, 78.7 percent of the defendants were found guilty.

Dissatisfaction with the traditional restrictive evidentiary rules—which stem from medieval practice antedating the English common law—has led to changes in statutes in some State jurisdictions. Two States, Arizona and Illinois, have adopted the Model Perjury Act which abolishes the rules, and a number of others have applied the policy of the act to their perjury statutes. Experience in these jurisdictions and common logic indicate that there is no reason why false statements cannot be tried by the same standard of proof beyond a reasonable doubt that prevails in the trial of all other criminal offenses.

Title IV implements the recommendation of the President's Commission, and incorporates the policies of the Model Perjury Act. It provides a false declarations offense punishable by a fine of not more than $10,000 or imprisonment for a term of 5 years, or both, which may be proved by the reasonable doubt standard. It also specifically provides for the prosecution of a false declaration in the case of irreconcilably contradictory statements without the necessity of specifying in the indictment which of the declarations was false. Each declaration upon which a prosecution is based must have been knowingly made, have been material to a point in question in the proceeding in which it was made, and have been made within the statute of limitations for the offense charged. The inconsistent declarations need not have been made in a single proceeding, nor have been material to a single point at issue. The falsity which must be alleged and proved is the falsity of the declaration at the time it was spoken, not a hypothetical falsity which would exist if the declaration were repeated at the time of indictment or trial. The declarant's belief that his statement was true at the time that he made it constitutes an affirmative defense.

The title also contains a recantation or retraction provision, modeled upon a New York penal statute, which permits a witness to avoid a false declarations prosecution by a timely retraction of his testimony within the course of a continuous court of grand jury proceeding. This provision encourages the witness to correct a false statement by permitting him to do so without incurring the risk of prosecution based upon inconsistent statements.

By strengthening the inducement to tell the truth and correct falsehoods, and providing for the effective prosecution and punishment of those who give false testimony, title IV substantially improves the capacity of our courts to administer justice. The usefulness of the title will by no means be restricted to organized crime prosecutions.

TITLE V—WITNESS PROTECTION FACILITIES

Mr. Chairman, just as citizens owe society a duty of coming forward when they are able to give relevant testimony to grand juries and at criminal trials, the Government should accept a responsibility for protecting its intended witnesses from reprisals where the possibility of such reprisals is clear. For this purpose, title V of S. 30 authorizes the Attorney General to rent, purchase, modify or remodel housing facilities and to make such facilities available to jeopardized Government witnesses and their families and otherwise to provide for their health, safety, and welfare. The title is operative, not just in connection with criminal trials, but in connection with any legal proceedings, Federal or State, where the underlying factual situation involves organized criminal activity. Facilities may be made available as long as is required for the protection of the witnesses, and the authority is broad enough to allow for relocation of the witnesses, but no witness is obliged to accept protection offered by the Attorney General under this title. The Attorney General is also authorized, when he offers protection for State witnesses, to condition his offer upon reimbursement by State agencies of all or part of the out-of-pocket expenses involved in maintaining and protecting the witnesses.

Mr. Chairman, this title is responsive to a recommendation by the President's Commission on Law Enforcement and Administration of Justice and meets the criticism that, when protection has been given witnesses, it has too often in the past been withdrawn immediately after the particular trial terminates. This title has the full support of the Department of Justice. Since all the Members of this body are well aware of the need to protect Government witnesses from retaliation by mobsters and other organized criminal elements, I would not elaborate further upon the need for this legislation.

TITLE VI—DEPOSITIONS

Mr. Chairman, title VI is designed to give the Government a right not presently enjoyed to preserve the testimony of its witnesses in criminal cases involving organized criminal activity. The Federal Rules of Criminal Procedure do not provide for this, but only for the taking of depositions under certain circumstances at the request of defendants in criminal cases and of material witnesses held in custody for failure to give bail to testify at a trial or hearing. These provisions are carried over in full in title VI. Title VI simply expands upon rule 15 of the criminal rules so as to meet certain very urgent problems, and there is no intention in meeting such problems to abrogate rule 15 or to limit the Judicial Conference of the United States in the exercise of its rulemaking authority pursuant to 28 United States Code 331 from addressing itself to other problems in this area or from adopting a broader approach. That any narrower approach would be inconsistent with the intent of the Congress is, of course, manifest in the title.

The basic problem that is attacked in

this title of S. 30 is the urgent necessity for curbing the power of criminal elements to destroy evidence by harming, intimidating, or bribing Government witnesses. Mr. Chairman, the Congress could treble the number of Federal criminal investigators, and neither that manpower nor the acumen of the individual investigators would mean very much unless the cooperation of witnesses can be secured and maintained, sometimes over a lengthy period, between the time that charges are lodged and the defendants are tried. With the making available of a procedure whereby the Government can preserve testimony for potential use at criminal trials, the inclination of criminals to attempt to frighten or bribe Government witnesses should rapidly subside, and the incidence of such obstructive tactics should decline remarkably.

Title VI adds a new section to chapter 223 of title 18 of the United States Code, entitled "Depositions To Preserve Testimony." Whenever, due to exceptional circumstances, it is in the interest of justice to preserve testimony after the filing of an indictment or information, the courts may grant motions for the taking of depositions. Since the problem seems particularly acute where the Government's witnesses are to testify against defendants involved in organized criminal activity, it was felt appropriate at this time that the provision be reduced to the measure of that most apparent need, and the committee has provided that Government witnesses may be deposed only if the Government's motion is supported by a certification of the Attorney General or his designee that the proceedings are against a person believed to have been a participant in an organized criminal activity. The concept of organized criminal activity is broader in scope than the concept of organized crime; it is meant to include any criminal activity collectively undertaken since in all such instances there is an increased potential for intimidation of Government witnesses. In addition, there is no requirement that the trial at hand be of that sort. It is access to collective criminal power that endangers the witness—whether of the Mafia, the Communist Party, the Black Panther Party, or the KKK. Such a defendant, no matter what he is being tried for—a violation of the Migratory Bird Act, for instance—can bring this power to bear to avoid criminal liability, and that is what this provision is designed to protect against.

Title VI has nothing to do with discovery; the Government and the defendant canont depose each other's witnesses under the title but only their own witnesses. The object is to preserve the testimony against the danger that it will not be available at the time of trial. But depositions taken under the provision will not necessarily be used at trials; the witnesses will still testify live if that is feasible. Depositions are to be taken to safeguard against dangers that witnesses will die or become ill, that they will be killed or injured, that they might hide or flee or remain outside the jurisdiction, be kidnaped, bribed, or improperly influenced, and so forth. The new language concerning use of depositions at trial is designed to codify present law in this area. It is not designed to circumscribe future judicial deevlopments. Nothing in the provision, for example, would prevent a court from permitting the use of a deposition of a testifying witness not only for impeachment, but as substantive evidence under *California* v. *Green*, 399 U.S. 149 (1970). Consequently, if a witness is deposed and his attendance and testimony at trial cannot be obtained for the reasons just mentioned, or he refuses to testify at trial, the deposition may then be used as substantive evidence. Moreover, a deposition may also be used under the section for purposes of impeaching a witness who testifies in person.

The taking and filing of the deposition and objections to its being used in evidence at trial are governed by existing practices in civil actions.

The taking and use of depositions under title VI, whether by the defendant or by the Government, is in accord with the concept of due process of law. Charges will have been filed first and the taking of the deposition is a trial in miniature. Even if held in custody, the defendant has a right to be present together with counsel and to be in the presence of the witness, and, whoever originated the procedure, counsel for the opposing side must be afforded an opportunity to cross-examine the witness. Provision is made for the appointment of counsel for the accused. The Government is required under the title to furnish the defendant for use at the taking of the deposition copies of any statements that would have to be given the defendant if the witness were testifying at the trial. When a defendant moves for the taking of a deposition but is unable to bear the expense, the court may direct that the Government stand the expenses incident to the taking of the depositions. The committee has provided that the Government may also be made to bear all such expenses when it is the party moving to take the deposition. Mr. Chairman, I feel sure that title VI affords all the necessary safeguards to allow for use of depositions under the terms of the title—or, in other words the duty of preserving the constitutional rights of accused persons has been fully discharged in providing for depositions under this title. Supreme Court precedent establishes that there is no deprivation of the right of accused to confront the witnesses against them when a record is admitted at one trial of testimony formally taken at an earlier proceeding, such as a preliminary hearing, where the defendant has enjoyed a right to confront the witnesses against him and to cross-examine, *California* v. *Green*, 399 U.S. 149 (1970), and I submit that title VI is not only a workable provision on depositions but one that is entirely fair for all concerned.

Once again, title VI should prove most effective in stymieing the organized criminal element—Mafia, Black Panther, or KKK—who would think to threaten or injure Government witnesses. Senator McCLELLAN has expressed the idea so well that I would quote him; he said:

> Indeed, depositions may be more effective than stone walls and guards in protecting the lives of informants and other citizens with informations concerning organized crime.

TITLE VII—LITIGATION CONCERNING SOURCES OF EVIDENCE

Mr. Chairman, title VII of the Organized Crime Control Act is designed to regulate motions to suppress evidence in certain limited situations where the motion is based upon unlawful electronic eavesdropping or wiretapping which occurred prior to the enactment of the Federal electronic surveillance laws on June 19, 1968—chapter 119, title 18, United States Code.

Under the procedure which the title establishes, upon a claim by an aggrieved party that evidence is inadmissible because it is the product of an unlawful electronic surveillance, or because it was obtained through a lead developed from an unlawful electronic surveillance, the Government will be required to affirm or deny that an unlawful electronic surveillance in fact occurred. If the claimant has standing to challenge the alleged unlawful conduct, this provision places an affirmative obligation upon the Government to search its records and to ascertain whether there has been an overhearing of a particular defendant. The Government has recently been making such searches a matter of practice—even when no request has been made by the defense—although there has been no statutory authority requiring disclosure of an electronic surveillance which occurred prior to the enactment of a warrant procedure. This title will require such disclosure, but require it only when requested by the defense.

Where there was in fact an unlawful overhearing prior to June 19, 1968, the title provides for an in camera examination of the Government's transcripts and records to determine whether they may be relevant to the claim of inadmissibility. Where there is no relevancy whatsoever, as determined by the Court, the transcripts need not be disclosed to the claimant or his counsel. To require disclosure under such circumstances can serve no purpose in the interest of justice, and may needlessly jeopardize the lives of Government agents and informants, harm the reputation of innocent third persons, and compromise the national security. To the extent that the court is permitted to determine relevancy in an ex parte proceeding, the title will modify the procedure established by the Supreme Court in *Alderman* v. *United States*, 394 U.S. 165 (1968). The Court in Alderman assumed that adequate protection against the dangers inherent in disclosure of the Government's records to the defendant and his counsel could be afforded by the use of protective orders, but the experience of the Department of Justice has indicated time and again that protective orders are inadequate even to prevent the unauthorized publication of its records and transcripts in the news media.

As I have indicated, the title applies only to disclosures where the electronic surveillance occurred prior to June 18, 1968. It is not necessary that it apply to disclosure where an electronic surveillance occurred after that date, because

such disclosure will be mandated, not by Alderman, but by section 2518 of title 18, United States Code, added by title III of the Omnibus Crime Control and Safe Streets Act of 1968. Section 2518(10)(e) provides a specific procedure for motions to suppress the contents of any intercepted wire or oral communication, or evidence derived therefrom, on the grounds that the communication was unlawfully intercepted, that the authorization for the interception was insufficient, or that the interception was not made in conformity with the authorization obtained. It provides, insofar as the disclosure of intercepted communications is concerned, that upon the filing of a motion to suppress by an aggrieved person the trial judge may in his discretion make available to such person and his counsel for inspection such portions of an intercepted communication, or evidence derived therefrom, as the judge determines to be in the interest of justice—see Senate Report No. 1097, 90th Congress Second Session 106, 1968. The provisions of this title will, therefore, control the disclosure of transcripts of electronic surveillances conducted prior to June 19, 1968. Thereafter, existing statutory law, not Alderman, will control. Consequently, in view of these amendments to title VII, its enactment, in conjunction with the provisions of title III of the 1968 act, provides the Federal Government with a comprehensive and integrated set of procedural rules governing suppression litigation concerning electronic surveillance.

Another portion of title VII provides that no claim will be considered that evidence is inadmissable because it is the indirect product of an electronic surveillance occurring prior to June 19, 1968, if the event which the evidence is intended to prove occurred more than 5 years after the surveillance took place. The provision amounts to a legislative directive that as a matter of law no evidence of an event can be found tainted by an alleged illegality anteceding the event by such a long period. This portion of the title does not apply to evidence which is directly procured by electronic surveillance.

This provision may be considered a legislative expression of the principle enunciated by the Supreme Court in *Wong Sun* v. *United States*, 371 U.S. 471 (1943). Under the facts of the case the defendant, Wong Sun, following an unlawful arrest on a narcotics charge, was arraigned and released on his own recognizance. Several days later he voluntarily returned to the police station and made an unsigned incriminatory statement. The Court, in determining whether the statement was inadmissible as a result of the unlawful arrest, said:

> We hold that the connection between the arrest and the statement had "become so attenuated as to dissipate the taint" . . . (Id. at 491).

In Wong Sun, it should be noted that a time lapse of several days was considered adequate to dissipate the taint. Certainly the time period of 5 years adopted in this provision is sufficiently long to assure that there is virtually no possibility that evidence will have been derived from a tainted lead. The purpose of the provision is not to defeat valid claims of inadmissibility, but rather to spare the courts and Government prosecutors from the burden of spending needless working hours in processing frivolous claims brought solely for purposes of delay. The burden is great where voluminous records of pre-1968 wiretaps and electronic eavesdropping are concerned.

As title VII was passed by the Senate, it applied to illegal acts generally, including all searches and seizures, unlawful confessions, and testimony compelled under lawful grants of immunity. The Judiciary Committee has limited the title to electronic surveillances because it was in respect to these that the Department of Justice indicated the need was greatest. The Department felt that the legislation was superfluous insofar as testimony under grants of immunity is concerned because a grant of immunity constitutionally has never been deemed to apply to future offenses. Although the use immunity concept embodied in title II will produce changes in the impact of immunity grants, the immunity conferred is not intended to be broader than required by existing transaction immunity statutes or the privilege against self-incrimination. There simply exists no constitutional privilege as to offenses that have not yet been committed.

TITLE VIII—SYNDICATED GAMBLING

Mr. Chairman, title VIII deals with syndicated gambling and the related corruption of law enforcement that it engenders. The title is based upon a proposal introduced at the instance of President Nixon who announced in his Message on Organized Crime delivered to the Congress in April 1969 that the administration had determined that the major thrust of its concerted antiorganized crime effort should be directed against gambling activities since "gambling income is the lifeline of organized crime."

There are a number of compelling reasons for giving high priority to an effective Federal effort against organized gambling. First, as the President indicated, illegal gambling constitutes the criminal syndicates' primary source of revenue. The estimated $6 billion to $7 billion a year that represents the profits of illegal gambling, as determined by the President's Commission on Law Enforcement and the Administration of Justice, goes far toward providing the capital that eventually goes into usurious loans, the Wholesale narcotics traffic, bootlegging, and the infiltration of legitimate businesses.

Second, from the social standpoint, the professional gambler preys upon society, taking his daily bet—perhaps 25 cents on a number bet or $5 on a horse bet off-track—from the residents of our communities who can least afford it. The President said:

> The most tragic victims of course, are the poor whose lack of financial resources, education, and acceptable living standards frequently breed the kind of resentment and hopelessness that make illegal gambling and drugs an attractive escape from the bleakness of ghetto life.

And finally, from the standpoint of law enforcement, the gambling operations of the criminal syndicates are particularly vulnerable. Because a large-scale gambling operation involves large numbers of persons, is dependent upon the use of communications facilities, and must be protected by bribing and paying off at least a few officials in each locality in which it flourishes, gambling is more susceptible than most organized crime activities to detection and prosecution.

Federal investigators and prosecutors are vigorously proceeding against syndicated gambling operations under existing authority. In May 1970, an intensive investigation conducted by the FBI in cooperation with the organized crime strike force in Detroit culminated in simultaneous raids at 58 locations in Detroit and Flint estimated to be handling in excess of $250,000 daily. The raids resulted in the arrest of 56 persons for violation of section 1952 of title 18, United States Code, by using interstate telephone facilities in aid of an unlawful gambling operation. Attorney General Mitchell, characterizing this as "the largest Federal gambling raid in history," said:

> Through operations such as this, this administration is convinced it can dry up the biggest source of funds for organized crime in this country.

Title VIII provides new tools for curbing both the large-scale gambling operations themselves and the corruption of local officials which they foster and upon which, in turn, they depend.

Part A of the title contains a special finding that illegal gambling involves the widespread use of, and has an effect upon, interstate commerce and the facilities of interstate commerce. This finding is of substantive importance to the title because by creating a legislative jurisdictional base it makes Federal gambling investigations and prosecutions possible without the necessity of establishing an interstate nexus on a case-by-case basis. The necessity for establishing a specific link to interstate commerce or the facilities of interstate commerce, under existing antigambling statutes has frustrated many criminal investigations and foreclosed the possibility of Federal prosecutions, even where gambling transactions were being conducted on a scale which necessarily affected commerce under judicial interpretations of the commerce clause. The Senate-passed bill contained extensive findings to spell out with particularity the manner in which gambling businesses necessarily utilize the channels of commerce, and how gambling affects the flow of money in commerce. The substance of the findings has been included in the legislative commentary of the bill reported by the Judiciary Committee rather than in the bill itself. Title VIII is squarely premised upon the commerce power as defined by the U.S. Supreme Court in *Wickard* v. *Filburn*, 317 U.S. 111 (1942); *Heart of Atlanta Motel* v. *United States*, 379 U.S. 241 (1964); and *Katzenbach* v. *McClung*, 379 U.S. 294 (1964).

Part B of the title would make it a Federal felony for large-scale gamblers and local officials to conspire to obstruct the enforcement of State and local laws

against gambling through bribery of public officials. Part C would make it a Federal offense to engage in a large-scale business enterprise of gambling. No part of the bill is intended to preempt local efforts to enforce antigambling laws. On the contrary, title VIII's expansion of the Federal jurisdiction over large scale gambling cases will improve local efforts, not merely by providing an impetus for effective and honest local enforcement, but also by making available to assist local efforts the expertise, manpower, and resources of the Federal agencies which under existing Federal antigambling statutes have developed high levels of special competence for dealing with gambling and corruption cases. The International Association of Chiefs of Police has endorsed title VIII, recognizing it not as a substitute but as a valuable addition to State efforts.

Part D of the title would establish, 2 years after its enactment, a commission to review national policy toward gambling. The commission will examine every aspect of the gambling problem, from data on the scope and types of legal and illegal gambling, to the broadest and most basic social policy grounds upon which public and governmental attitudes towards gambling rest. Its proceedings and report will serve to enlighten the public on the relationship between local gambling and the national syndicates, and will provide a basis for a thorough reexamination by the Federal and State governments of gambling policies, laws, and enforcement practices.

I wish to point out, in particular, two unique provisions of the bill which are not contained in other Federal antigambling statutes. One is a forfeiture provision which will permit any property used in illegal gambling, including money to be seized and subjected to judicial forfeiture procedures. This provision will be of tremendous assistance in closing down gambling establishments and keeping them out of business.

The second provision establishes a presumption, for the purpose of showing probable cause for obtaining warrants for arrests, interceptions, and other searches and seizures, that a business operated by five or more persons for 2 or more successive days, receives gross revenue in excess of $2,000 in any single day. The presumption is supported by the experience of the Department of Justice, which indicates that a gambling business of this dimension receives far in excess of this amount daily. This finding goes solely to probable cause and cannot be utlized to establish proof of an element of the offense at trial. Arrests without warrants depend upon the same constitutional standard of probable cause, and upon establishment of the same jurisdictional criteria as search and arrests warrants issued pursuant to the title. It may therefore be assumed that the same probability will exist.

Title VIII in its entirety will be of great assistance to Federal investigators and prosecutors, and we may anticipate that the strike forces will put it to immediate use.

TITLE IX—RACKETEER-INFLUENCED AND CORRUPT ORGANIZATIONS

Mr. Chairman, perhaps the single most alarming aspect of the organized crime problem in the United States in recent years has been the growing infestation of racketeers into legitimate business enterprises. This evil corruption of our commerce and trade must be stopped. Title IX of S. 30 provides the machinery whereby the infiltration of racketeers into legitimate businesses can be stopped and the process can be reversed when such infiltration does occur.

Title IX represents, in large measure, an adaptation of the machinery used in the antitrust field to redress violations of the Sherman Act and other antitrust legislation. I would not attempt to say who was first to suggest the re-tooling of the antitrust machinery to combat organized crime, but one of the earliest and stoutest proponents of such an approach was the American Bar Association. The Department of Justice has been consulted, of course, in drafting the legislation and fully supports title IX.

Title IX adds a chapter to title 18 of the United States Code, but it contains both civil as well as criminal provisions. The provisions of the title operate largely against racketeering activity as defined in the bill or, more precisely, against patterns of racketeering activity. "Racketeering activity" is defined to include a wide variety of crimes, both State and Federal, that are generally associated with organized crime. A "pattern of racketeering activity" means simply two or more acts of racketeering activity, one of which, in order that the provision will not be an ex post facto law, must have occurred subsequent to enactment of the title. The two acts essential to the pattern must occur within 10 years of each other, excluding periods that the offender is incarcerated.

Title IX makes it a crime for anyone to acquire, maintain, or conduct any enterprise engaged in interstate or foreign commerce through a pattern of racketeering activity or collection of debts incurred in an illegal usury operation. It is also made criminal for anyone to invest in an enterprise, with certain limitations, funds that were derived from either a pattern of racketeering activity or collection of debts incurred in an illegal usury operation. The maximum penalty provided is $25,000 fine and imprisonment for 20 years, and there is also provision for criminal forfeiture of the property interests involved in the violations. The courts may issue restraining orders and require performance bonds to prevent postconviction transfers in an effort to defeat the forfeiture provisions, and governance of the forfeited property is provided for after the fashion of civil forfeitures under the customs laws. Under these provisions, the racketeering influence in an enterprise can be destroyed; no longer will one racketeer simply take over in the place of another who has been convicted and sent to prison.

Courts are given broad powers under the title to proceed civilly, using essentially their equitable powers, to reform corrupted organizations, for example, by prohibiting the racketeers to participate any longer in the enterprise, by ordering divestitures, and even by ordering dissolution or reorganization of the enterprise. In addition, at the suggestion of the gentleman from Arizona (Mr. STEIGER) and also the American Bar Association and others, the committee has provided that private persons injured by reason of a violation of the title may recover treble damages in Federal courts—another example of the antitrust remedy being adapted for use against organized criminality.

The title also amends section 2516 of title 18 of the United States Code to include the activities made criminal under the title within the list of specific offenses for which the interception of wire or oral communications is permitted under court order.

Another prominent feature of title IX is the provision for civil investigative demands. This is to give the Attorney General a civil counterpart to grand jury process; it will enable the Department of Justice to obtain by civil process documents and materials relevant to a racketeering investigation. These provisions are patterned after the Antitrust Civil Process Act, section 1311 and following of title 15 of the United States Code. But the demands must be reasonable and may not seek materials that would be privileged if sought by a subpena duces tecum; moreover, there are provisions governing the return of the materials.

I should not take the time to go into all of the many provisions of title IX; but I believe the committee will find the title a carefully drawn and worthwhile body of legislation—that is to say, legislation that holds out very clear promise of solving the extremely serious problem of the infiltration of racketeers into legitimate businesses. That problem, I submit, is deserving of the highest priority in the ordering of our domestic affairs.

TITLE X—DANGEROUS SPECIAL OFFENDER SENTENCING

Mr. Chairman, title X deals with one of our society's most difficult problems—sentencing of organized crime leaders and dangerous recidivist offenders. Title X will allow judges concerned about dangerous criminals who prey upon law-abiding citizens to impose terms consonant with the defendant's pattern of criminal conduct.

The procedure for special offender sentencing which is incorporated in the title has been developed from sentencing concepts advanced by the American Bar Association in its "Standards Relating to Sentencing Alternatives and Procedures," the American Law Institute in its "Model Penal Code," and the National Council on Crime and Delinquency in its "Model Sentencing Act." Although the problems of sentencing have received the attention of legal scholars and members of the bench and bar in undertakings such as these, they have received scant attention from Congress and the courts.

One difficulty with our sentencing law has been that, for a given crime, every

offender has been exposed to the single maximum punishment authorized by the Congress. The emphasis has been entirely upon the bare element of the crime which the defendant has committed, and not upon the kind of person the defendant is and the overall context in which the offense was committed—the circumstances of aggravation of the offense. Yet modern penologists believe that, in sentencing, the court should have broad leeway to consider the criminal and the circumstances surrounding the commission of the offense, as well as the crime. The present sentencing structure does not provide terms of sufficient length to protect society by incapacitating recidivists, professionals, and leaders of groups engaged in organized crime.

A staff study made by the Criminal Laws Subcommittee of the Senate Judiciary Committee a year ago, based upon FBI sentencing data, indicated that two-thirds of the La Cosa Nostra members included in the study and indicted by the Government since 1960 have faced maximum jail terms of 5 years or less. Fewer than one-fourth received maximum jail terms for the offenses of which they were convicted. Twelve percent did not go to jail at all. The sentences for the majority of these organized criminals averaged only 40 to 50 percent of the maximums which were authorized by law. The study appears in more detail in the RECORD of November 17, 1969—115 CONGRESSIONAL RECORD, S14499, daily edition.

The defendants upon whom special extended sentences may be imposed pursuant to this title will all be hard-core offenders—in some but not all cases they will be leaders of criminal syndicates. Three types of criminals are defined and singled out for special treatment as follows:

The first type is the three-time felony repeater, who may or may not be a member of a criminal syndicate. Recidivists are, of course, obvious examples of offenders for whom terms longer than the normal maximums are required. The National Commission on the Cause and Prevention of Violence reported that "by far the greatest proportion of all serious violence is committed by repeaters. While the number of hard-core repeaters is small compared to the number of one-time offenders, the former has a much higher rate of violence and inflicts considerably more serious injury"—115 CONGRESSIONAL RECORD H11314, daily edition, November 24, 1969. We have gone too long without a Federal general recidivist statute, and it would be intolerable if now we should reject this opportunity to enact a law making the distinction between aggravated offenders and ordinary ones for the purpose of sentencing.

The second type is the professional offender. He is typified by the veteran bank robber, safe cracker, or counterfeiter, a hard-core criminal who may have devoted his entire career to criminal pursuits but has not necessarily been three times convicted.

The third type is typified by the organized crime offender. It includes the defendant who is convicted of conspiracy to engage in a pattern of criminal conduct, or is convicted of a felony which is in furtherance of a conspiracy, where he acted in a position of leadership, or used force or bribery to accomplish the objective of the conspiracy. Efforts were made when S. 30 was before the Senate to restrict the classification to offenders who engaged in a list of specified offenses presumably typical of organized crime activity. However, the Senate realized that members of the criminal syndicates engage in too great a variety of criminal operations to permit any restriction to a list of offenses. The Judiciary Committee, following the Senate's example, refrained from imposing any restriction upon the type of criminal activity which is encompassed.

Title X contains a provision for appellate review of sentences which is of great importance for offenders who are shown to be unusually dangerous to society and are exposed to unusually long sentences. A review is provided when sought either by the defendant or by the Government. However, any increase of a sentence upon appeal will be permitted only at the instance of the Government.

The provision of appellate review implements a recommendation of the President's Commission on Law Enforcement and Administration of Justice that—

> There must be some kind of supervision over those trial judges who, because of corruption, political considerations, or lack of knowledge, tend to mete out light sentences in cases involving organized crime management personnel. Consideration should therefore be given to allowing the prosecution the right of appeal regarding sentences of persons in management positions in organized crime activity or groups. Constitutional requirements for such an appellate procedure must be carefully explored. (Report, "The Challenge of Crime in a Free Society," p. 203.)

The review provisions have been carefully framed to meet constitutional requirements. Since it seems clear from the Supreme Court's decision in *North Carolina* v. *Pearce*, 395 U.S. 711 (1969), that due process of law requires that a defendant must be protected from the possibility that an increased sentence will be imposed upon him by a vindictive court as punishment for his having exercised a right of appeal, title X has been drafted so as to assure that any change in a sentence to the detriment of the defendant will result solely from the Government's action and not from his own. To this end, the Senate version of S. 30 provided that a sentence may be increased only upon review taken by the Government; that the Government's right to take a sentence review must be exercised at least 5 days before the expiration of the defendant's right to seek sentence review or appeal of his conviction; that an increased sentence will be foreclosed if the Government withdraws its review; and that any review taken by the Government will be dismissed upon a showing of abuse of the right to take such a review.

The Judiciary Committee added clarifying language to assure that the taking of a review of the sentence by the Government will be deemed the taking of a review of the sentence and an appeal of the conviction by the defendant. The Senate version was less than clear on this point. Thus, the taking of a sentence review by the United States brings about the same result that would follow if the defendant had exercised his right to take both a review of the sentence and an appeal of the conviction. The danger of retaliation which led the Court to the result obtained in North Carolina against Pearce, supra, is entirely absent even from question in the Judiciary Committee version of title X.

Subject only to the foregoing limitations upon increased sentences, the appellate review provisions permit the court of appeals after considering the record in the court below, including the entire presentence report on the defendant, information submitted during the trial and at the sentencing hearing, and the court's findings and reasons for the sentence imposed—to affirm the sentence, impose or direct the imposition of any sentence which the sentencing court could originally have imposed, or remand for further sentencing.

Taken together, the portions of the bill relating to increased sentences and to appellate review of sentencing, will do much to correct lenient sentencing of extraordinary, dangerous offenders.

I should like to take this opportunity to point out certain changes in the Senate version of title X which the Judiciary Committee has made at the suggestion of the American Bar Association.

Mr. Edward L. Wright, then president-elect of the American Bar Association, testified at the hearings on S. 30 before Subcommittee No. 5 of the House Judiciary Committee, on July 23, 1970, in support of S. 30. With minor reservations, which related for the most part to title X, Mr. Wright, as spokesman for the association, favorably endorsed each of the titles of the bill. Title X has been modified to reflect specific suggestions of the ABA to make it more nearly conform to the ABA Standards Relating to Sentencing Alternatives and Procedures.

First, the ABA noted that in the Senate version of title X the recidivist offender definition included a defendant convicted of two previous felony offenses, without specifying that the felonies must have been committed upon two previous occasions prior to the occasion of the commission of the felony which triggers the special sentencing procedure. At the suggestion of the ABA, the Judiciary Committee amended the definition so as to restrict it to a defendant who has previously been convicted for two or more felonies committed on occasions different from one another and from the occasion of the triggering felony, thereby conforming it to the equivalent ABA standard—compare standard 3.3(b)(i).

Also, upon the recommendation of the ABA, the definition was further amended to require a lapse of less than 5 years between the commission of the triggering felony and the defendant's release, on parole or otherwise, from imprisonment following a previous conviction or the defendant's commission of a previous felony—compare standard 3.3(b)(ii). It should be noted that the 5-year period is measured from "commission" not con-

viction. The reason for such a cutoff period, as expressed in the ABA commentary upon the standards, is "that the judgment of likely recurrence which repeated criminality permits, and which provides the justification for an enhanced term in the first place, becomes progressively diluted as the time between the present and the last offense increases."—commentary to standard 3.3.

The ABA also found title X as passed by the Senate inconsistent with its standards in respect to the maximum term which it authorized for special offenders. The bill provided a maximum 30-year term, whereas the ABA standards provide a maximum 25-year term for exceptional cases—compare standard 3.1(c)(1) and 3.3(a)(ii). The ABA further observed that whereas its standards require that a special term authorized for exceptional cases be related in severity to the sentence otherwise provided for the offense, the Senate version of title X contained no such requirement.

Upon the recommendation of the ABA, the Judiciary Committee has amended the title to provide in pertinent part:

The court shall sentence the defendant to imprisonment for an appropriate term not to exceed twenty-five years and not disproportionate in severity to the maximum term otherwise authorized by law for such felony.

The term "proportionate" as employed here does not purport to require any precise mathematical ratio between the term which may be imposed under a special sentence and the maximum term which may otherwise be imposed for the felony of which the defendant stands convicted. The language has been inserted simply to make explicit what was already a matter of legislative intent in the bill passed by the Senate. See Senate Report No. 91–617, 91st Congress, first session, at 91 and 166, 1969, "appropriateness." In the Senate version the imposition of a 30-year term would not have been warranted under the special sentencing procedure where the statute under which the defendant was convicted carried a maximum 2-year penalty. Such a result would be explicitly impermissible under the committee bill. Under the standard now included in the title, a sentence must be consonant with the pattern of criminal conduct in which the defendant has indulged as established by evidence adduced at trial and at the special sentencing hearing. A sentence for a 25-year term of imprisonment would not be disproportionate, under the standard now included in the bill, where the defendant was convicted for a felony punishable by a maximum 5-year term, if such a term is clearly appropriate in consideration of the defendant's conduct as established in the course of the trial and the sentencing proceeding. For example, Raymond Patriarca, a Cosa Nostra boss, was convicted in 1968 for violating 18 U.S.C. section 1952—travel in interstate commerce to use violence to promote a gambling enterprise—where the violence consisted of the killing of Willie Marfeo. Patriarca would qualify as a special offender under each of the three definitions. A 25-year sentence would have not been disproportionately severe.

The ABA expressed an opinion that the disclosure of the defendant's presentence report should be governed by more precise standards than were incorporated in the Senate bill. The bill has accordingly been modified by the Judiciary Committee to be consistent with the principles governing disclosure incorporated in the standards—see standards 4.4(a)(b); 4.5(a)(b); 5.5(b)(ii)(iii).

The ABA voiced its objections to a provision in the Senate bill which would have permitted the prosecutor to inform the court, ex parte, about the defendant's prior criminal record and other behavioral conduct leading the prosecutor to believe the defendant to be a dangerous special offender. It was thought that such notification would prejudice the court against the defendant during the trial of the offense with which he was presently charged. The title has been amended by the Judiciary Committee to insure that nothing disclosed by a presentence investigation will come to the attention of the court prior to an adjudication of guilt. The bill now provides that the fact that the defendant is alleged to ge a dangerous special offender will not be an issue upon the trial of the felony, will not be disclosed to the jury, and will not be disclosed to the presiding judge without the consent of the parties prior to a plea of guilty or finding of guilt.

Whereas the principle of special sentencing for exceptional cases is endorsed by the ABA in its sentencing standards, the ABA suggested at the subcommittee hearings that the delineation of certain special offenders be more precisely drawn. After careful consideration of the delineation of each of the three classifications of offenders to which I previously referred, the Judiciary Committee concluded that the standard for the determination of the so-called professional offender could be rendered more precise. The Senate bill defined the classification to include the defendant who commits a felony "as part of a pattern of criminal conduct—which constituted a substantial source of his income, and in which he manifested special skill or expertise." At the suggestion of President Wright, the Judiciary Committee has defined "substantial source" of income, for the purpose of proving the defendant to be within the category, as a source which yields in excess of the amount of income which a workingman receives under the Fair Labor Standards Act—act of 1938, 52 Stat. 1602, as amended 80 Stat. 838—in a year or more, and which during the same period, provides the defendant with an income exceeding 50 percent of his declared adjusted gross income under section 62 of the Internal Revenue Act of 1954—68A Stat. 17, as amended 83 Stat. 655.

The provision which relates to the defendant's declared gross income under section 62 of the Internal Revenue Act cannot be defeated by failure to file a tax return, since a defendant who has filed no tax return is considered to have a "declared adjusted gross income" of zero. The Judiciary Committee also defined more precisely the terms "special expertise" and "pattern of conduct." The foregoing provisions define as explicitly as practicable a standard by which a defendant may be fairly considered a professional offender, and provide an objective and convenient measure of proof as to the substantial nature of his income from criminal sources. The remaining classifications are, I think, adequately delineated as the bill was passed by the Senate.

As a final observation upon title X during the hearings before the subcommittee, Mr. Wright noted that although those who formulated the ABA Standards believed that "reform must begin with revision of the penal code, and particularly with the sentencing structure which they prescribe"—commentary p. 51—the American Bar Association endorses the enactment of the title at this time. Mr. Wright said with reference to the issue:

We agree with this as a general policy and we know that the entire federal criminal code is hopefully on the road to needed revision through the National Commission now at work. But since S. 30 is such a comprehensive bill, dealing with a matter of such magnitude and importance, we believe the Congress would do a service to the administration of criminal justice by incorporating the sentencing principles our Association now recommends.

The further views of the American Bar Association upon title X and other titles of S. 30 are included in a letter from Mr. Edward L. Wright, president, to Chairman EMANUEL CELLER, Committee on the Judiciary, dated September 11, 1970. I ask that this letter be printed in the RECORD at the conclusion of my remarks.

Title X contains one remaining provision which I should like to call to the attention of the committee, because of its importance not only to trials or organized crime figures, but of criminal defendants generally. The provision to which I refer states that:

No limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence.

Its purpose is to assure that a sentencing court will be able to obtain all pertinent information about the background and prior behavior of the defendant in all Federal criminal cases. See generally, *Williams* v. *New York*, 337 U.S. 241, 247 (1949). The exclusionary rules developed for trial on the issue of guilt are not to be applied. Compare 18 U.S.C. 3146(f). The result which was obtained in *Verdugo* v. *United States*, 402 F. 2d 599, 608–613 (9th Cir. 1968), and the approach used in *Armpriester* v. *United States*, 256 F. 2d 294, 296–97 (4th Cir.), cert. denied, 358 U.S. 856 (1958) are no longer to obtain.

Mr. Chairman, in my opinion, title X as reported by the committee has been greatly refined and improved while all of its substantive provisions passed by the Senate have been retained intact.

TITLE XI—REGULATION OF EXPLOSIVES

Mr. Chairman, in testimony before the House and Senate committees investigating the rash of bombings which have taken place in the Nation, administration officials reported that, between Jan-

uary 1, 1969, and April 15, 1970, there were over 1,000 bombings involving explosives and well over 3,500 bombings involving incendiaries—for a total in excess of 4,500 bombings in the Nation in less than 16 months. Furthermore, a great many bombings have occurred since April 15, 1970—as I am sure every Member is aware—bombings of Federal buildings, of courthouses, of police stations—even the explosion of booby traps laid to injure or kill police officers. It is obvious, in the face of this awful phenomenon, that tough Federal legislation is needed, first, to restrict the accessibility of explosives so that the vicious elements cannot obtain them and, second, to deal effectively with the conspiratorial groups who are so insane as to use explosives and incendiary devices.

Title XI of S. 30 combines two administration proposals for dealing with the problem—a proposal to regulate commerce in explosives and a proposal to punish, in various forms, the misuse of explosives.

Title XI adds a new chapter to title 18 of the United States Code, a large part of which is designed to govern the importation, manufacture, distribution, and storage of explosive materials. Under the title no one may engage in the business of importing, manufacturing, or dealing in explosive materials—and this includes intrastate as well as interstate businesses—without a license. Restrictions are then placed upon the sale of explosives by the licensees; permits are to be issued to purchasers; and very careful recordkeeping is required concerning dealings in explosives, including the keeping of some forms required of purchasers. It is made unlawful, for example, for licensees knowingly to sell explosives to persons under 21 years of age, to felons or to persons charged with felonies; to fugitives from justice, illicit drug users, or adjudicated mental defectives, or to persons who will transport or hold the explosives in violation of State law. The making of false records about dealings in explosives is severely punishable; and there are provisions for inspecting the books and records and business premises of the licensees. Thefts of explosives must be reported within the day of discovery, and the possession of stolen explosives and the unlawful storage of explosives is made criminal. In brief, a principal object of title XI is carefully to regulate the explosives industry with the aim of keeping explosives out of the hands of all but legitimate users.

In addition, title XI makes it criminal for anyone to transport or receive in interstate commerce any explosives with the knowledge or intent that it will be used to kill, injure, intimidate, or unlawfully to damage or destroy any property; and it is also made a Federal violation for anyone maliciously to damage or destroy, or attempt to damage or destroy, with explosives any property owned, used, leased, or possessed by the Federal Government. The maximum penalty provided for these violations is $10,000 fine and 10 years' imprisonment, but, if personal injury results, $20,000 fine and 20 years' imprisonment, and, if death results, the death penalty may be invoked. The title also makes bomb threats and bomb hoaxes punishable where instruments of commerce are used.

The Department of the Treasury will bear responsibility for administering the regulatory provisions of title XI, and the Federal Bureau of Investigation will have investigative jurisdiction over the bombing and related violations.

Mr. Chairman, I know how necessary it is for me to elaborate upon the need for this legislation, but, still, it is difficult for me just to speak about title XI in a matter-of-fact way. The recent bombing at the University of Wisconsin is fresh in all of our minds, I am sure. This Nation has suffered grievously in recent years—there have been assassinations, riots, and now this series of bombings. It is a sickening thing. Every American of good will, I am sure, shares that feeling. I believe title XI to be sound and urgent legislation.

Mr. Chairman, I would also like to make explicit reference for students and scholars of this bill in my remarks to the recent comprehensive discussion of S. 30 as it passed the Senate by Senator McCLELLAN that appears in the fall 1970 issue of the Notre Dame Law Review. While this discussion is directed to the Senate bill, it also constitutes valuable legislative history and justification for what we do here today. Each of the New York Bar Association's and the ACLU's objections are, for example, examined and refuted. Our work builds on a foundation first laid in the Senate, and Senator McCLELLAN has ably explained the what and why of the Senate's action. Students and scholars should consult his article.

Mr. McCULLOCH. Mr. Chairman, I yield 5 minutes to the gentleman from Minnesota (Mr. MACGREGOR).

(Mr. MACGREGOR asked and was given permission to revise and extend his remarks.)

Mr. MACGREGOR. Mr. Chairman, I appreciate the generosity of the ranking minority member, the gentleman from Ohio (Mr. McCULLOCH), in granting me this time.

I rise in support of this bill to control organized crime and I urge the adoption of each and every one of its titles by the members of this Committee and subsequently by the Members of this House.

I believe each of its many provisions is necessary in America today if we are to give the law enforcement and criminal justice officers the necessary tools, proper under any reasonable interpretation of the U.S. Constitution, to deal with the growing menace of organized crime and racketeering in America. This bill will also respond to the desperately serious concern existing in the minds of the American people caused by the recent rash of bombings and bomb threats. Passage of this bill will help to insure the domestic tranquillity promised by the preamble to the Constitution of the United States.

Mr. McCULLOCH. Mr. Chairman, I yield 3 minutes to the gentleman from Wisconsin (Mr. SCHADEBERG).

(Mr. SCHADEBERG asked and was given permission to revise and extend his remarks.)

Mr. SCHADEBERG. Mr. Chairman, I thank the gentleman from Ohio for yielding to me this time.

Mr. Chairman, in testimony before the House and Senate committees investigating the rash of bombings which have taken place throughout our Nation, administration officials testified that their statistics indicate that between January 1, 1969, and April 15, of this year there were more than 1,000 bombings involving explosives and well over 3,500 bombings involving incendiary devices in this country. I am sure that every Member of this Congress is well aware of many of the bombings which have occurred since the period covered by the administration's statistics. Bombing of police stations, courthouses, Federal buildings, and even booby-trap bombings directed at the police themselves. One such bombing was carried out on the campus of the University of Wisconsin with the tragic loss of a researcher, leaving behind a wife and three children.

There no longer can be any doubt that tough Federal legislation is needed to keep explosives out of the hands of persons most likely to misuse them. There also can be no question that strong legislation is necessary to give the Federal Government the power to deal with the extremist groups who use explosives and incendiary devices to achieve their ends.

There no longer can be any doubt that strict and substantial penalties must be administered to those who are found guilty of using explosives illegally.

Title XI of S. 30 combines the administration's two proposals to deal with the problem presented by this rash of bombings. The first aspect of title XI establishes a regulatory framework for manufacturers, dealers, and users of explosives. The second facet of title XI would make many of the recent bombings Federal offenses subject to stringent sanctions including the death penalty where, as at the University of Wisconsin, the bombing causes the death of any person.

Specifically, title XI requires all explosive manufacturers, importers, and dealers to be federally licensed. All persons or companies desiring to purchase explosives in interstate transactions, must first obtain a Federal permit thereby subjecting themselves to Federal regulation.

Licensees are not permitted to sell explosives to persons under 21 years old, to felons, to persons under indictment for a felony, to fugitives from justice, to unlawful drug users, and to adjudicated mental defectives. They are also prohibited from selling explosives to nonlicensees or permittees where such sale would be in violation of State or local law at the place of sale or to persons who the licensee has reason to believe will transport the explosives into a State where the purchase of these explosives would be illegal.

Nonlicensees or permittees are forbidden from shipping, transporting or receiving explosives in interstate or foreign commerce. They are also prohibited from

distributing any explosives to persons who they know or have reason to believe do not reside in the distributor's State of residence.

Title XI requires licensees to keep records of every transaction involving explosives. False entries in these records are severely sanctioned. All unregulated purchasers of explosives will be required to complete required forms in connection with each purchase including a statement of the intended use of the explosives. Knowingly false statements made by such purchasers will subject them to up to 10 years imprisonment.

Possession of stolen explosives knowing them to have been stolen will be a Federal offense as will the unlawful storage of explosives. Possessors of explosives will be required to report all thefts of their explosives to the appropriate authorities within 24 hours of discovery of the theft.

This title will also set standards for the issuance of licenses and permits to manufacturers, importers, dealers, and users of explosives, and will require them to make their records and stocks of explosives open for inspection at specified times.

In sum, the first part of title XI establishes a stringent Federal regulatory framework governing explosives, and, by closely regulating the interstate aspects of the explosives industry, permits the States to enact their own laws to regulate the possession and use of explosives within their borders without having transfers of explosives.

The second part of title XI will prohibit the transporting and receiving, in interstate or foreign commerce, of explosive materials and incendiary devices with the knowledge that they will be used to kill, injure, or intimidate any individual or unlawfully to damage or destroy any real or personal property. Violation of this section will subject the violator to 10 years imprisonment if no personal injury results, to 20 years imprisonment if personal injury does result, and to the death penalty if the use of such explosive materials or incendiary devices causes death.

Similar sanctions will be applicable to the damaging or destroying, or attempted damaging or destroying, by explosive materials or incendiary devices, of real or personal property owned, possessed or leased to the United States. These sanctions will also apply to campus bombings and the bombings of businesses engaged in interstate commerce. Bomb threats, malicious bomb hoaxes, and the possession of explosive materials in federally owned or leased buildings are also covered by title XI.

The Department of the Treasury will have the responsibility of administering the regulatory provisions of title XI. The Federal Bureau of Investigation will investigate bombings and attempted bombings in violation of the second part of title XI. To assist in the investigation of such bombings, wiretap authority will be given with respect to violations of this aspect of title XI.

I wholeheartedly endorse the efforts of the administration and the House Judiciary Committee in recommending the enactment of this much needed explosives control law as part of S. 30.

Mr. McCULLOCH. Mr. Chairman, I yield 3 minutes to the gentleman from Iowa (Mr. MAYNE).

(Mr. MAYNE asked and was given permission to revise and extend his marks.)

Mr. MAYNE. Mr. Chairman, the bill which we are finally considering in this Chamber today is long overdue in this country. It certainly should have been given the very highest priority by this 91st Congress in the first session of the 91st Congress rather than delayed until this late date which is practically on the eve of our preelection recess.

Mr. Chairman, this bill as it affects organized crime was introduced in the other body on January 15, 1969, when the 91st Congress was very new, indeed. It was specifically endorsed by the President in his message to Congress of April 23, 1969, but did not pass that body until more than a year later, on January 23, 1970. It was then referred on January 26, 1970, to the Committee on the Judiciary of this body where it was to languish until hearings finally began on May 20, 1970.

Mr. Chairman, in view of the critical national need for action against organized crime it is indeed unfortunate that it took until September 30 to favorably report the bill from the committee to the House, but it is finally before us today.

My colleagues, the people of this country, the law-abiding people of this country who make up the overwhelming majority of our citizens, are looking to us to pass this bill promptly by an overwhelming vote.

The bill before us incorporates a very essential part, but only a part, of President Nixon's anticrime proposals, some of which are still bogged down in the Judiciary Committee and other committees of this body. But the bill does at least include most of the measures against organized crime which the President has been requesting since he assumed the office of the Presidency and on which an outraged public has been demanding action for lo these many months. Title XI of the bill also finally includes the much needed antibombing provisions requested by the President. I am proud to have one of the original sponsors of the antibombing provisions of the act, having introduced the original bill to strengthen our laws concerning illegal use, transportation or possession of explosives on March 26 of this year and the Explosives Control Act of 1970 on July 21, 1970.

It has been my privilege to serve as a member of the House Judiciary Committee only since February 16, 1970. Prior to that date I took the floor of this House on more than one occasion to urge the committee to take swift, decisive and favorable action on the President's anticrime proposals and particularly those aimed at organized crime. Since being assigned to the Judiciary Committee, I have continued these efforts both in the committee and on the floor of this House because of my firm belief that the law enforcement officers of this country definitely need the additional tools provided in this bill for the protection of the lives and property of law-abiding American citizens.

In view of the shocking increase of crime in this country in recent year, I have considered it my duty as a member of the committee to be a rather persistent burr under the saddle of the distinguished chairman of the Judiciary Committee, the gentleman from New York (Mr. CELLER) reminding him of the urgency for action on these measures. Much time has been lost while these important proposals were seemingly shelved in the subcommittee, invaluable time in the fight to maintain law, order, and decency in this Nation.

But that is water under the bridge now, and the subcommittee did finally recommend the bill generally in the form now before us, with the constructive addition of title XI and XII by the full Judiciary Committee. Despite our past differences with respect to delays which I still consider unwarranted, I commend the chairman (Mr. CELLER) for now giving his support to this legislation. The chairman (Mr. CELLER), the distinguished gentleman from Ohio (Mr. McCULLOCH) who is ranking minority member of both Subcommittee No. 5 and the full Judiciary Committee, my other colleagues from the committee and the members of the committee staff who worked on this bill have all earned our country's gratitude for their efforts in producing the bill we now have before us.

Although it has taken much longer than it should have, the bill before us as reported by the Judiciary Committee is a good bill, well deserving this body's total support and speedy enactment into law.

The Nixon administration came into office totally pledged to its "commitment to a Federal program to deter, apprehend, prosecute, convict, and punish the overlords of organized crime in America." It has increased efforts within the executive branch within the existing law, toward meeting this commitment—but it needs the tools which S. 30 will provide to do the job effectively.

The threat of organized crime must not be ignored or tolerated. Its insidious effects upon young people, upon legitimate business, upon our governments at all levels and upon our other institutions must be sternly and irrevocably eradicated. Attacks by extremists of the left and right upon our society and institutions certainly must be met and dealt with, and S. 30 contains provisions which will improve the ability of our law enforcement agencies to accomplish this task. But in addition to coping with these extremists we must move decisively against organized crime, which continues to be America's principal supplier of illegal goods and services—gambling, usurious loans, illicit drugs, pornography, and prostitution.

Organized crime is daily increasing its operations in legitimate business fields while employing bankruptcy frauds, tax evasion, extortion, terrorism, arson, monopolization, and other illegitimate techniques.

The major focus and principal objective of S. 30 is to provide new weapons

capable of striking at the heart of this criminal hierarchy and its sources of revenue. The central core of this legislation, providing these new weapons, is reason enough for S. 30 to be enacted, but the further titles added by the Judiciary Committee are salutary and added reason for passage of this bill.

Enactment of S. 30 will not in itself make our society whole or cure all its ills, any more than any other program or proposal past or present. It can serve to strengthen and support those responsible for protecting this Republic and its democratic institutions from illegal deprivations and maraudings, thereby helping provide the sense of security and stability essential if rational men are to pursue constructive change peacefully through the processes our system has evolved.

This bill is reasonable. Its provisions were thoughtfully and painstakingly drafted and redrafted, keeping clearly in mind the constitutional rights of all involved—not only of the accused, but also of the victim of crime. In recent years the constitutional rights of these innocent victims too often have been overlooked in the well-meaning but sometimes unbalanced efforts to afford every possible protection to those accused of crime. Justice with her scales in balance demands equal protection for the law-abiding citizen as well as the citizen accused of crime.

As a member of the Judiciary Committee, I have carefully reviewed the testimony before the subcommittee and have given the bill the closest scrutiny. In my view, the bill as reported by the committee is constitutional, and the committee has "gone the extra mile" to insure that the rights of the accused will be adequately protected.

I have no fear that our courts would permit a construction or interpretation of this bill which would inflict an unconstitutional hazard upon the rights of any individual. Nor is it reasonable to assume that the Department of Justice as presently constituted or in future administrations would attempt to work such a construction or interpretation. I urge my colleagues to reject this false imputation which has been advanced by some in order to obstruct passage of this vital and urgently needed legislation.

As a former special agent of the Federal Bureau of Investigation, Commissioner of Uniform State Laws, a trial lawyer for more than 20 years, and one who has been active in the organized bar, both in the State of Iowa and nationally, I am keenly aware of the emergency which presently confronts our law enforcement officers and those responsible for the proper administration of criminal justice. It is from this background of personal experience that I now urge my colleagues to recognize the crisis facing our Nation by enacting this legislation promptly and without substantial crippling amendment.

I shall yield to my distinguished colleagues from the Judiciary Committee, most particularly to those members of Subcommittee No. 5, for discussion of the intricacies of other titles of S. 30, but I am particularly pleased that the committee has incorporated into S. 30 as title XI, regulation of explosives, provisions largely drawn from administration bills H.R. 16699 and H.R. 18573.

An original cosponsor of these important bills, it was my honor and pleasure to be the first Congressman to testify before House Judiciary Subcommittee No. 5 with regard to the need for strengthening the Federal laws regulating explosives and their use.

The subcommittee hearings on H.R. 16699 and H.R. 18573 revealed that between January 1, 1969, and April 15, 1970, law enforcement officials throughout this Nation reported 4,330 bombings, 1,475 attempted bombings, and 35,129 bombing threats. These outrages, in this time period, caused the death of 40 persons and approximately $22 million of property damage.

According to John Naisbitt, director of the Urban Research Corp. of Chicago, more than half the bombs reported in 1970 were planted to injure police officers, either at police stations, in squad cars or at other locations. Most of these attempts succeeded in their purpose. A second most popular target has been school buildings, and third most frequent was the bombing of corporate offices.

In the past year, there has been a rising trend in these bombings, with many aimed at people rather than the symbolic destruction of empty buildings. Yet 32 States still have no general statutory restrictions on the sale or transfer of explosives—and our existing Federal laws are inadequate to curb effectively the increase in illegal use of explosives, particularly by militant groups committed to violence.

It was to fill these gaps in existing law and to encourage the respective States to enact and enforce realistic statutory restrictions upon explosives that President Nixon requested the legislative proposals subsequently introduced as H.R. 16699 and H.R. 18573, and upon which title XI of S. 30 is principally based.

President Nixon's message to the Congress requesting enactment of this legislation echoed the great outrage felt and voiced by responsible citizens throughout America. As a recent New York Times editorial concluded:

> The mad criminals who threaten and bomb must be recognized for what they are and prosecuted with full force not only of the law, but of the community they would rule and ruin.

In my testimony before Subcommittee No. 5 regarding the proposed antibombing legislation, I called attention to the fact that our Nation had been embarrassed by recent bombing of Washington, D.C., diplomatic missions, entitled to our protection as our guests, including the InterAmerican Defense Board and the Embassies of the U.S.S.R., Haiti, Argentina, Uruguay, and the Dominican Republic.

My testimony referred to the blight upon the peace and tranquility of my own State of Iowa invoked by 75 incendiary bombings, 105 explosive bombings, 174 attempted bombings and 375 bombing threats during the period between January 1969 and April 1970. Luckily no one has yet been killed in these bombings in Iowa, but several have been injured, some quite severely. Property damage in Iowa alone has totaled millions of dollars.

Since the completion of the hearings on these bills and before S. 30 was finally reported by the House Judiciary Committee, the people of Iowa have seen even more vicious and destructive illegal use of explosives across our borders in adjacent States. In recent weeks they have read of the boobytrap bomb killing of a police officer in Omaha, Nebr., the maiming of an Oklahoma district court judge in an auto bombing, the death of a research assistant and injury to many others at the University of Wisconsin bombing, and of seven bombings and some 400 bombing threats in the Minneapolis-St. Paul area.

This Monday, October 5, the Associated Press reported that alcohol, tobacco, and firearms tax agents, working undercover, had confiscated an illegal cache of 60 sticks of quarrying explosive, two boxes of super primer cord and a quantity of blasting caps, and had made arrests. Allegedly these instruments of death had been stolen from a construction site a considerable distance away from the secret cache.

As legislators we have a solemn duty to do whatever we legally can to crush these attempts to rule by terror, no matter what the objective or philosophy of the perpetrators. The intended victims and innocent bystanders killed or maimed in these inhuman bombings cry out for prompt and effective counteraction. Title XI of S. 30 will at least help curb bombings by establishing Federal controls over the interstate and foreign commerce of explosives. The title, having established this Federal shield, then would encourage and enable more effective State regulation of the sale, transfer, and other disposition of explosives.

Title XI would require Federal licenses to be obtained by all explosive manufacturers, importers, and dealers, and would require Federal permits to be acquired by all users who depend on interstate commerce to obtain explosives. Distribution of explosives will be prohibited to those under 21, drug addicts, mental defectives, fugitives from justice, and persons indicted for or convicted of certain crimes. It will be a Federal offense to falsify records, to make false statements to obtain explosives, to sell explosives in violation of State law or to traffic in stolen explosives.

In addition, title XI strengthens the Federal criminal law with respect to the illegal use, transportation, or possession of explosives. The definition of explosives is broadened to include Molotov cocktails and other incendiary devices.

The full Judiciary Committee further amended title XI, at the urging of President Nixon and with my complete support, to cover malicious damage or destruction by explosives to Federal premises and other Federal property as well as to the premises and property of institutions or organizations receiving Federal financial assistance.

Title XI specifically proscribes malicious damage or destruction by explosives of real or personal property used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce.

In view of current events and trends, the increased penalties provided in this title are reasonable and necessary, including possible imposition of the death penalty where bombings result in the death of a victim.

Title XI recognizes the need for some flexibility to provide for continued lawful use of explosives by mature, law-abiding citizens. For example, black powder in amounts of less than 5 pounds is exempted from the legislation's restrictions on possession and storage.

Sportsmen, hunters, and other law-abiding citizens have nothing to fear from the enactment of this legislation, so desperately needed to protect our citizenry from bombers and incendiarists whose ravages continue to menace the security of our beloved country. I urge all Members to vote "aye" on final passage of S. 30 and to resist amendments designed to substantially weaken the law-enforcement provisions of the bill.

Mr. McCULLOCH. Mr. Chairman, I yield 5 minutes to the gentleman from Indiana (Mr. DENNIS).

(Mr. DENNIS asked and was given permission to revise and extend his remarks.)

Mr. DENNIS. Mr. Chairman, this is an important bill, designed to combat organized crime in the United States.

I strongly support the objectives of this bill, and I shall vote for it, because of my support for these objectives—whether the bill is amended or not. Because of the importance of these objectives, and the undesirable public effect of a rejection of a measure of this character, I am willing to and I shall resolve debatable points of constitutionality in favor of the bill, leaving them subject, as always, to the later judgment of the courts.

I believe this to be an appropriate approach.

But none of these considerations leads me to believe that the bill, as drawn, is sacrosanct; or that efforts ought not to be made to improve it before its final passage.

Indeed, it seems to me to be our duty to do this, if we believe that we can, and I conceive that this must be peculiarly the duty of those of us who are trained and experienced in the law, and who are bers of the committee which reported out this bill, and who voted to report it favorably, as I did.

In line with that view of my duty I filed individual views with the committee report, and in line with that view I reserve the right to support and to offer amendments.

My individual views, filed with our committee report, dealt with two phases of the bill: First, title X, which has to do with dangerous special offender sentencing; and, second, with the death penalty provision included under title XI.

The matter of the death penalty—to which I am and long have been opposed—is one of individual conscience and conviction, upon which sincere and honest people can and do differ. It is not peculiar to this bill, and it is not the main thrust of the measure now before us. I may address myself further to that subject under the 5-minute rule when and if an amendment is offered dealing with that problem.

At present I shall confine the burden of my remarks to title X, the section dealing with the subject of dangerous special offender sentencing.

The dangerous special offender sentencing provisions of this bill pose serious constitutional and policy questions.

In general the measure provides that prior to trial the U.S. district attorney may file a notice that a defendant is a "dangerous special offender," as that term is quite broadly defined in the bill, and in such a case—if the defendant is convicted of the crime charged—a special hearing shall be held before the court, sitting without a jury, to determine, "by a preponderance of the information," whether the defendant in fact is such a "dangerous special offender." If he is found so to be the court shall then sentence the defendant "for an appropriate term not to exceed 25 years and not disproportionate in severity to the term otherwise authorized by law for such felony."

In other words, where the ordinary defendant might be subject to a punishment of 5 years, let us say, for the offense in question, a defendant found to come within this category may be sentenced for up to 25 years for the same offense.

This can be done because the court, without a jury, and on the basis in part of a presentence probation report, has concluded that the defendant committed his offense "as a part of a pattern of conduct which was criminal."

Whether this unusual procedure is either constitutional or wise probably depends on whether one adopts the view that we are dealing here only with the matter of informing the court as to an adequate or appropriate sentence—or whether we believe that we are, actually and in practical effect, trying a man for additional alleged criminal acts for which he has never been tried before a jury and found guilty, but on the basis of which we are going to sentence him to prison for up to 25 years.

The question is not an easy one to resolve; and in practice much will depend upon the fairness and wisdom with which the procedure is administered and applied.

But there is one additional facet of this provision to which I specifically direct attention.

The bill before us provides that there may be a review, by the court of appeals, of the action of the trial court in imposing a "dangerous special offender" sentence, and of the length and severity of the sentence imposed.

The principle of judicial review of sentencing is good; it is in line with modern legal thinking; it makes for a sensible uniformity of sentence; and it offers relief for the unjust sentence occasionally inflicted, and thus enhances respect for the law. Such a provision would seem particularly desirable as a part of so severe a procedure as the special dangerous offender sentencing section.

But, buy a provision of well nigh unheard of in our jurisprudence, not only the defendant, but also the Government is given an appeal under this measure, both from the decision of the trial court that a special offender sentence ought not to be imposed at all, and as to the length of the special sentence imposed—and, on appeal or request for review by the Government, the length of the special dangerous offender sentence imposed by the trial court can be increased by the court of appeals.

We thus create a situation where if an appeal be taken the defendant may be worse off than he was before.

It is true that no sentence can be increased under this measure if the defendant seeks the review.

But the procedure is subject to very grave abuse.

There is nothing to prevent the Government from seeking review, or from doing so routinely, and then intimating to the defendant that the Government might abandon its request for review, if the defendant will do likewise.

This threat, indeed, can be used, if it is so desired, not only to discourage an appeal by the defendant from a special dangerous offender sentence—but even as a club to discourage an appeal—and, it may be an entirely meritorious appeal—from his conviction on the merits in the first place.

The commentary of the Advisory Committee of the American Bar Association on Standards Relating to Appellate Review of Sentences put the matter thus:

> A much more serious problem could be created by giving the state the power to seek an increase on appeal. The existence of such power could well have the effect of preventing the defendant from appealing even on the merits of his conviction. The ability to seek an increase could be a powerful club, the very existence of which—even assuming its good faith use—might induce a defendant to leave well enough alone.

In addition the possibility of an increase of sentence on appeal by the Government raises serious constitutional questions relating to double jeopardy and to due process of law which only the Supreme Court of the United States can ultimately resolve. This, I think, is particularly true in the case where the trial court has refused to find the defendant to be a dangerous special offender or to impose any sentence on that basis.

It is my judgment that it smacks of unfairness and is wholly unnecessary to load the already strong provisions of title X down with the additional problems of governmental appeal of and possible increase of the severity of the special title X dangerous offender sentence.

Rather a humane and reasonable approach would be to ameliorate the rigors of this title and to avoid these constitutional problems, by providing for review of the special offender sentence by the defendant only, without any possibility of an increase of this sentence on appeal beyond the penalty meted out by the trial court.

At the appropriate time I shall, therefore, offer an amendment to remove from title X provisions for appeal of sentence

by the Government, and I hope that the committee and the House may support me.

I am pleased to state that I am joined in sponsorship of this amendment by my colleagues on the Committee on the Judiciary, the gentleman from Illinois (Mr. RAILSBACK) and the gentleman from New York (Mr. FISH), and, I believe, by other members of that committee.

Mr. YATES. Mr. Chairman, will the gentleman yield?

Mr. DENNIS. I yield to the gentleman.

Mr. YATES. Mr. Chairman, may I say, I too shall vote for the amendment to be offered by the gentleman.

I should like to call the gentleman's attention to page 132 of the bill with reference to section 1968, "Civil Investigative Demand."

I am concerned with the tremendous power that this section seems to give the Attorney General. If the Attorney General in his own discretion believes that any person or business may have books, records, and information pertaining to what the Attorney General calls a racketeering investigation, he may issue in writing a civil investigative demand requiring such person to produce materials for examination.

The powers given are tremendous here and I wonder why the committee did not require a court order in the first instance in order to obtain such information.

Mr. DENNIS. I did not particularly address myself to that point, but I would agree with the gentleman from Illinois that that is a very sweeping power.

Mr. YATES. Certainly, in any other case of search, the Attorney General is required to go to court for a subpena. He has to in the case of wiretapping and he has to get a subpena duces tecum where he wants books and records. Why should he be given this right merely by saying that he is engaged in a racketeering investigation and be able to go to the office of any business, or to any person and say, "I want to see your books and records." I think this language should be stricken from the bill.

The CHAIRMAN. The time of the gentleman has expired.

Mr. CELLER. Mr. Chairman, I yield 1 additional minute to the gentleman from Indiana.

Mr. Chairman, will the gentleman yield?

Mr. DENNIS. I yield to the distinguished chairman.

Mr. CELLER. Is it not true, however, that despite the fact that there would be this civil investigative demand resident in the Attorney General, it must be limited to organized crime, and there are guidelines that are found on pages 122 and 123 which must govern the Attorney General before he can make such demands.

Mr. YATES. Mr. Chairman, will the gentleman yield?

Mr. DENNIS. I yield to the gentleman from Illinois.

Mr. YATES. I should like to ask the chairman of the committee whether there is anywhere in this bill a definition of organized crime, to which the gentleman refers.

Mr. CELLER. No; there is no such definition. That particular matter was left flexible so that there would be no difficulty in enabling the Attorney General to attack this very horrendous evil that besets our Nation.

The CHAIRMAN. The time of the gentleman from Indiana has expired.

Mr. MCCULLOCH. Mr. Chairman, I yield 5 minutes to the gentleman from Illinois (Mr. RAILSBACK).

(Mr. RAILSBACK asked and was given permission to revise and extend his remarks.)

Mr. RAILSBACK. Mr. Chairman, I want to begin by paying my respects to the chairman of the Judiciary Committee who, in my opinion, showed great leadership in his willingness to compromise certain positions that were contrary, really, to his own personal feelings. I give the chairman a great deal of credit for his willingness to do this and to accommodate some of the Members on our side of the aisle.

I also wish to compliment the ranking Republican member of the committee (Mr. MCCULLOCH) as well as the gentleman from Virginia (Mr. POFF), who I think did an outstanding job.

Many of us were concerned about particular titles in the bill, S. 30 which was reported to us by the other body. I, for one, was concerned about titles I title VII, relating to litigation concerning sources of evidence. And I was concerned about the dangerous offender provision, the sentencing of dangerous special offenders, which is embodied in title X.

This was a give-and-take proposition. We met for 4 days and 1 night, trying to report out a bill that we could all support. Right now many of us still have reservations about some parts of this legislation, and yet we know that the problem of organized crime is so important that we were willing to try to report out a bill that we think substantially accomplishes the purposes of the Nixon administration, while at the same time is not offensive to us from a constitutional standpoint.

I want to point out to the Members that in respect to these 3 titles, title I relating to the special grand jury, there were certain amendments that were offered, and one effect was to take out two of the four purposes for which the special grand jury could be called and would be authorized to report. Not only that, but one of the two that was left was changed to relate only to a special grand jury investigation and report concerning appointed officials, and not elected officials.

In respect to title VII, I think it is very significant that we took out the applicability of this section which deals with litigation concerning sources of evidence to States and to local governments. We also put a time limit on it, which I think greatly improved it.

And in respect to title X, the dangerous offender section, providing for the sentencing, my colleague and friend from Virginia offered a substitute which substantially incorporated the recommendations of the American Bar Association.

In my opinion, title X, by reason of the amendment offered by the gentleman from Virginia, has substantially improved the bill, so I am going to join the chairman, and I am going to join the gentleman from Ohio (Mr. MCCULLOCH) the ranking Member on our side of the aisle, and support the bill.

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. RAILSBACK. I yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Chairman, I thank the gentleman for yielding. I am still troubled about the give and take that took place in the committee. I fail to appreciate as fully as the gentleman that there was that much give and take. I thought we were operating under the premise that there was going to be a discharge petition brought into operation if we in the Judiciary did not get a bill out without too many amendments. I admit there were over 50 important improvements, but it seems to me title X has failed, even with the supposedly generous concessions of the gentleman from Virginia, to come anywhere near what was desired by at least a few of our Members.

Mr. RAILSBACK. Let me respond to my friend by saying I think his understanding of what happened is correct. There was the very real possibility that a discharge petition was going to be filed, but what this meant was, in my opinion, that there was an overwhelming majority of the elected Representatives in this House of Representatives who favored reporting out a substantially stronger bill than the one we are reporting out right now. It put tremendous pressure on the chairman and on all of the members of the committee.

Let me finish by saying this is the majority will speaking. I think this reflects the will of the American public. They are crying for a tough bill.

Mr. CONYERS. But the committee was working under that pressure the gentleman was speaking about.

Mr. RAILSBACK. There is no question about that. The people want a tough anticrime bill.

Mr. Chairman, for many years there has been an awareness of the menace of organized crime in this country. Since 1954, the Justice Department has had an organized crime and racketeering section. Committees of Congress have held hearings which have developed shocking information. Occasionally a newspaper will dramatize the dealings of organized crime. But the menace remains and must be attacked.

On April 23, 1969, President Nixon sent to Congress a special message on organized crime. The President stated:

> Today, organized crime has deeply penetrated broad segments of American life. In our great cities, it is operating prosperous criminal cartels. In our suburban areas and smaller cities, it is expanding its corrosive influence. Its economic base is principally derived from its virtual monopoly of illegal gambling, the numbers racket, and the importation of narcotics. To a large degree, it underwrites the loan-sharking business in the United States and actively participates in fraudulent bankruptcies. It encourages housebreaking and burglary by providing efficient disposal methods for stolen goods. It quietly continues to infiltrate and corrupt organized labor. It is increasing its enormous holdings and influence in the world of legiti-

mate business. To achieve his end, the organized criminal relies on physical terror and psychological intimidation, on economic retaliation and political bribery, on citizen indifference and governmental acquiescence. He corrupts our governing institutions and subverts our democratic processes. For him, the moral and legal subversion of our society is a life-long and lucrative profession.

He warned the good people of this country that the time for action is now, saying:

As a matter of national "public policy", I must warn our citizens that the threat of organized crime cannot be ignored or tolerated any longer. It will not be eliminated by loud voices and good intentions. It will be eliminated by carefully conceived, well-funded and well-executed action plans. Furthermore, our action plans against organized crime must be established on a long-term basis in order to relentlessly pursue the criminal syndicate. This goal will not be easily attained. Over many decades, organized crime has extended its roots deep into American society and they will not be easily extracted. Our success will first depend on the support of our citizens who must be informed of the dangers that organized crime poses. Success also will require the help of Congress and of the State and local governments.

In 1965, President Johnson created the President's Commissions on Law Enforcement and Administration of Justice with Nicholas deB. Katzenbach as chairman. Among the elements of the commission was a Task Force on Organized Crime. Serving on the Task Force were Kingman Brewster, Thomas J. Cahill, and Lewis F. Powell. The task force report, published in 1967, contained over 20 recommendations, and many of these proposals have served as a source of portions of the bill under consideration today. The history of these recommendations and the caliber of individuals involved in making them is clear and convincing proof of the broad support for and desirability of the proposals.

Senate bill 30 was introduced in January of 1969. About 1 year later on January 23, 1970, the Senate overwhelmingly passed S. 30 by a vote of 73 to 1. This bears repeating; there was only one Senator voting against the bill.

The House Committee on the Judiciary was referred the bill and scheduled hearings which began May 20, 1970, and continued for a total of 8 separate days, the last public hearing being held on August 5. During this period, the committee also held 5 days of hearings on explosives. I report this because I do not want my colleagues to feel that this is some sort of a sinister measure being slipped through without study. On the contrary, some have complained that it has taken too long to process the legislation. But I can assure my colleagues that the Subcommittee No. 5, on which I am privileged to serve, gave careful thought to several detailed and lengthy critiques of the Senate-passed bill by several respected organizations, including the American Bar Association, the American Civil Liberties Union, the American Trial Lawyers Association, the Association of the Bar of the City of New York, and that of the County of New York, as well as the National Council on Crime and Delinquency. The subcommittee held about 7 days of executive sessions on the bill and several changes were made in the Senate-passed bill. We have reported a bill which contains several safeguards which were not in the Senate mill. And we have, I feel, a substantially improved bill, yet one which is still tough enough to deal with the subject of organized crime effectively.

Before I discuss provisions of the legislation in any detail, let me make clear that there were serious objections levied at some of the provisions of the Senate-passed bill and although I believe that most of these have been satisfied by action of the House committee, I must admit to some uneasiness as to the possible abuse of certain of the provisions which might diminish the rights of individuals beyond that which may be necessary to combat organized crime.

The following is a brief, title-by-title summary of the provisions of the committee bill:

TITLE I—SPECIAL GRAND JURY

In its 1967 report, the Task Force on Organized Crime recommended:

At least one investigative grand jury should be impaneled annually in each jurisdiction that has major organized crime activity.

The report stated:

Such grand juries must stay in session long enough to allow for the unusually long time required to build an organized crime case.

As contained in the Senate-passed version such special grand juries were largely independent of court control. Some witnesses opposed this aspect of independence from the courts. The House Judiciary Committee altered the Senate version so as to bring the special grand juries more under the control of the Federal courts. The power of a grand jury lies in the subpena—through it witnesses can be compelled to appear and bring books and records. Under Federal law, subpenas issue only out of the court and thus the grand jury is generally thought of as an "arm of the court." The House Committee version recognizes that court control is desirable.

In addition to making an indictment, these special grand juries would also be empowered to issue a presentment or a report which charges something less than the violation of a Federal law. These reports can concern misconduct involving appointed governmental officials and organized crime. When the report identifies an individual, he is granted the protections of notice, opportunity to present evidence, and judicial review. In addition, he is also guaranteed that he can prepare an answer and have his answer printed as an appendix to the grand jury report. Also, the court can issue orders preventing the unauthorized publication of the report.

It is true that after a report is made public, the subject of such report can only hope that the press and the readers will give his answer equal weight to that of the grand jury report. But, the authority of a special grand jury to issue such a report is limited in this bill to those cases involving organized criminal activity. With such limitations and restrictions, the public exposure of appointed officials concernig their noncriminal misconduct, malfeasance, or misfeasance in office involving organized criminal activity as a basis for a recommendation or removal or disciplinary action, is warranted.

The State of New York has had a statute of similar nature on its books and this law served as a model for the preparation of the language in this bill.

TITLE II—GENERAL IMMUNITY

A grand jury subpena can compel the attendance of a witness and the production of books and records, but obtaining the witness' testimony and inspection of the books and records cannot be accomplished at the expense of the privilege against self-incrimination. In order to compel the testimony and not infringe upon the right to avoid self-incrimination, the concept of immunity has arisen whereby the witness can be forced to testify and protected from having his testimony used against him. Historically two types of immunity have been recognized, one is "transaction" immunity and the other is "use" immunity. Under the former, the witness is protected from any prosecution concerning the "transaction" no matter how much independent evidence unrelated to his testimony was uncovered for use against him. Under the "use" immunity, it is still possible to use unrelated evidence for a prosecution so long as that evidence was not directly or indirectly related to the testimony given under immunity.

In keeping with the recommendation of the President's Task Force, this legislation contains a general Federal immunity statute. It provides "use" immunity rather than "transaction" immunity.

Under recent court decisions, it is anticipated that the "use" immunity is constitutionally sufficient. The cases of *Malloy* v. *Hogan*, 378 U.S. 1 and *Murphy* v. *Waterfront Commission*, 378 U.S. 52, 1964, seem to clearly sanction "use" immunity. A lengthy discussion of cases and the history of immunity can be found in the Senate committee report (S. Rept. 91–617) at pages 51 et seq.

TITLE III—RECALCITRANT WITNESSES

Where legal formalities and procedures have been followed and a witness expresses his contempt for the court by refusing to testify before the court or a grand jury, this legislation would permit the confinement of such witness for a period not to exceed 18 months and would prohibit his release on bail if his appeal of such order is frivolous or taken for delay. The appeal must be disposed of within 30 days.

Although it is possible that such authority might be subject to abuse, we are dealing with Federal judges and courts and the authority is limited. It is, of course, similar to the present procedure followed under the civil law. It could be used to force testimony of witnesses who have been granted immunity.

TITLE IV—FALSE DECLARATIONS

The perjury laws are to encourage a witness to give truthful testimony. In keeping with recommendations of the President's Commission as well as the American Bar Association, this legisla-

tion abolishes rules which required more than the sworn testimony of one witness to prove a statement false and which prohibited the use of circumstantial evidence of falsity. This legislation provides that where a witness under oath knowingly makes statements which are inconsistent to the degree that one of them is necessarily false, he has perjured himself unless he corrects his statements during the same proceeding and the declaration has not substantially affected the proceeding.

TITLE V—PROTECTED FACILITIES FOR HOUSING GOVERNMENT WITNESSES

While other provisions of this legislation are designed toward creating grand juries to take and require testimony of witnesses, cases against organized crime have often been dropped in the past, according to the testimony of the Attorney General, because witnesses refuse to testify and are in fear of their life. Tampering with witnesses has been one of organized crime's most effective counter weapons.

The charge has been made that this section of the legislation could easily be subject to abuse and used as a means of employing preventive detention of "undesirables." And yet the people we are concerned with are those who are cooperating by offering testimony against organized crime and a former Attorney General has testified that, between 1961 and 1965, the organized crime program of the Justice Department lost more than 25 informants. Furthermore, what is authorized is the "offering" of such facilities. There is no authority granted in this bill for mandatory incarceration in such facilities. We have authorized a voluntary program.

TITLE VI—DEPOSITIONS

In keeping with the purpose of title V to protect the Government witnesses themselves, this title seeks to protect the evidence the witnesses have to offer from corruption or other interference by authorizing the taking of pretrial testimony in a deposition form potentially admissible at trial to preserve the testimony. If such potentially admissible evidence is available, it may frustrate and remove the chief incentive that organized crime has in tampering with witnesses or their testimony.

Under the title as revised by the House Committee, the Government, after certification by the Attorney General or his designee that a legal proceeding is against one who is believed to have participated in organized criminal activity, may be authorized to use a deposition of a Government witness in the criminal proceeding. A court order is necessary and the usual protections of notice, counsel, cross-examination, and rules of evidence would apply. In addition, the fifth amendment rights of a defendant would remain.

TITLE VII—LITIGATION CONCERNING SOURCES OF EVIDENCE

In a 1969 decision, the U.S. Supreme Court held that after a defendant who claimed that evidence against him was the fruit of unconstitutional electronic surveillance had established the illegality of the evidence gathering by the Government, he must be given all that confidential material in the Government's files. The Court rejected the Government's contention that the trial court could be permitted to screen the Government files in private and give the defendant only material which is "arguably relevant" to his claim. *Alderman* v. *United States*, 394 U.S. 165.

The Alderman rule involved a case occurring prior to enactment of the Federal wiretapping and electronic surveillance law—chapter 119, title 18, United States Code—on June 19, 1968. Nonetheless, it seriously endangers the lives of informants and discourages prosecution of organized crime participants by requiring that all of the Government's evidence be given to the defendant for review. In the case of organized crime, giving it to one defendant is in reality giving it to the entire structure of organized crime. Motions to suppress and for disclosure are, in the opinion of many, unnecessary beyond that evidence which is realistically relevant to the case of the defendant on behalf of whom the motion is made.

While there is no argument that illegally obtained evidence may not be used against a defendant, two aspects of the Alderman decision are troublesome; namely, the requirement that even nonrelevant evidence be turned over from the Government's files, and also that once illegally obtained evidence was obtained concerning an individual, it must be disclosed even if the prosecution is for an event which had not occurred at the time the evidence was secured.

The House Committee added language in this title to the effect that disclosure of information from the Government's files shall not be required "unless such information may be relevant to a pending claim of *such inadmissibility*." Thus we have added a requirement of relevancy which was not included in the Supreme Court's ruling in the Alderman case. It remains for the Supreme Court to consider this in further litigation, however, in the dissent which he wrote to the Alderman decision, Justice Harlan stated:

> It is not difficult to imagine cases in which the danger of unauthorized disclosure of important information would clearly outweigh the risk that an error may be made by the trial judge in determining whether a particular conversation is arguably relevant to the pending prosecution.

This title also deals with the other troublesome aspect of the Alderman ruling, that prospective criminal prosecutions of a defendant could serve as a reason for opening past Government files to the defendant. The House Committee added language which provides that if a crime was committed more than 5 years following the illegal gathering of evidence by the Government and involved the same defendant, the evidence gathered over 5 years earlier could not be presumed to have been the cause of the prosecution for the later act, and thus there could be no forced disclosure of the Government files.

TITLE VIII—SYNDICATED GAMBLING

In his message to Congress on organized crime the President stated that:

> This administration has concluded that the major thrust of its concerted anti-organized crime effort should be directed against *gambling* activities. While gambling may seem to most Americans to be the least reprehensible of all the activities of organized crime, it is gambling which provides the bulk of the revenues that eventually go into usurious loans, bribes of police and local officials, "campaign contributions" to politicians, the wholesale narcotics traffic, the infiltration of legitimate businesses, and to pay for the large stable of lawyers and accountants and assorted professional men who are in the hire of organized crime.
>
> Gambling income is the *lifeline* of organized crime. If we can cut it or constrict it, we will be striking close to its heart.

This title is similar to legislation which was sent to Congress during the administration of President Johnson. It enlarges the Federal jurisdiction over illegal gambling activities, which are defined as violating a law, involving 5 or more persons, operating for more than 30 days or having a gross income of $2,000 in a single day.

The title also creates a Commission To Review National Policy Toward Gambling.

TITLE IX—RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

This title is designed to deal with the infiltration of organized crime into legitimate business and labor. The title makes it a crime to use organized crime profits or methods to establish, acquire, or operate any legitimate business. It makes available antitrust case sanctions of a civil nature to remove organized crime from legitimate organizations.

TITLE X—DANGEROUS SPECIAL OFFENDER SENTENCING

This title is similar to the approach which the House recently adopted in the drug abuse legislation. It provides for additional extended sentences of up to 25 years for dangerous adult special offenders.

A special presentencing hearing would be held at which the defendant would be represented by counsel, could cross-examine witnesses and provide evidence, and which would be conducted without regard to the rules of evidence, thus permitting the judge to take into consideration any pertinent evidence. The decision of the judge could be appealed by either the Government or the defendant.

This approach has been adocated by the American Bar Association, the American Law Institute, and the National Council on Crime and Delinquency. It was also recommended by the President's Crime Commission. Nonetheless, it does deal in the sensitive constitutional area of due process, and must not be abused.

TITLE XI—REGULATION OF EXPLOSIVES

This title was added by the House committee following 5 days of testimony on the subject of explosives. It increases the penalties for the illegal use of explosives and expands Federal control of the subject. It specifically exempts the use of black powder in amounts of 5 pounds or less for handloaders and other legal users. It establishes licensing and permits regulation. And it authorizes the FBI to investigate college campus riots and bombings.

TITLE XII—NATIONAL COMMISSION ON INDIVIDUAL RIGHTS

This title was added in the House committee to establish an agency composed of Senators, Congressmen, and Presidential appointees, for the purpose of conducting a comprehensive study of special grand juries, wiretapping, and electronic surveillance, bail reform and preventive detention, no-knock search warrants, and accumulation of data on individuals by Federal agencies, as well as other Federal laws and practices which may infringe upon the individual rights of the people of the United States. We do not want to move blindly and the Commission can be quite useful to Congress in this field.

Mr. McCULLOCH. Mr. Chairman, I yield 3 minutes to the gentleman from Florida (Mr. CRAMER), a longtime Member of the House Judiciary Committee.

Mr. CRAMER. Mr. Chairman, I thank the gentleman from Ohio, the ranking member of the committee on the minority side, for yielding.

Mr. Chairman, I congratulate the committee on this tough hardhat crime bill, which is much needed. I am delighted the committee took the action the American people are demanding be taken with regard to the bombers and the burners in America, the bomb throwers and the ambushers and the bushwackers, and I hope before long we will be taking affirmative action with regard to the cop killers. I am delighted in particular to see in this legislation the antibombing section, as well as other sections, many of which I have introduced for a number of years, including the immunity of witnesses, as an example, and including in addition the antibombing title, which provides for the death penalty where bombing results in death.

Mr. Chairman, when we had kidnapings in America—for instance, the famous Lindberg case—the American people demanded action and the Congress acted. They demanded that something be done to stop the heinous kidnaping of children in America. It was done. Kidnaping has almost come to a halt because of the action taken by the Congress at the demand of the people. I hope bombings will come to a similar halt. The radical revolutionaries in this country have as their intent and purpose the disruption of law and order in America, the killing of as they say "the pigs," meaning the policemen, and the tearing down and bombing of as they say "the pigstys," meaning, of course, the police headquarters and the jails.

Mr. Chairman, the time has come for Congress to act. I am delighted to see it is doing so, and in particular using the Lindberg law pattern and saying to the bombers that we are going to put them out of business, and if they do not get out of business, the death penalty can be invoked if they kill someone in a bomb attack. There is no more heinous or sneaking attack, except perhaps in South Vietnam, no more heinous or cowardly attack that can be made on an American citizen than by hiding a bomb and attacking an innocent person, such as the graduate student at the University of Wisconsin who was killed in the bombing of the library of research facility.

I am glad to see this step taken by the Congress. I have introduced other stop-the-cop-killer legislation, and I hope that step will be taken. I will be testifying before the Senate Internal Security Committee this afternoon on it. I hope the step will also be taken with respect to the "cop killers," with respect to those who would kill our firemen while on duty, with respect to those who would kill our National Guardsmen while on duty.

Frankly, I believe it is a national plan. It is not just happening. I believe it is a national, planned program on the part of a very small number of radical revolutionaries who want to destroy our institutions in this country.

I am glad to see the Congress bringing forth this strong bill, this hard-hat bill. I wholeheartedly support it.

(Mr. CRAMER asked and was given permission to revise and extend his remarks.)

Mr. McCULLOCH. Mr. Chairman, I would be pleased if the majority would use some time.

The CHAIRMAN. The Chair will advise the gentleman that he has three times as much time remaining as the gentleman from New York.

Mr. McCULLOCH. Mr. Chairman, I have no request at this immediate moment for any of that time, and I have no desire to slow the proceedings.

Mr. CELLER. Mr. Chairman, how much time do I have remaining?

The CHAIRMAN. The gentleman from New York has 8 minutes remaining.

Mr. CELLER. Mr. Chairman, I yield 5 minutes to the gentleman from New York (Mr. SCHEUER).

(Mr. SCHEUER asked and was given permission to revise and extend his remarks.)

Mr. HOGAN. Mr. Chairman, will the gentleman yield?

Mr. SCHEUER. I am happy to yield to the gentleman from Maryland.

(Mr. HOGAN asked and was given permission to revise and extend his remarks.)

Mr. HOGAN. Mr. Chairman, I should like to associate myself with the remarks of the gentleman from Florida.

Mr. Chairman, the Organized Crime Control Act of 1970 is, in my opinion, a major effort to provide the Federal Government some of the weapons needed to root out crime.

If you ask the average citizen what he is most concerned about in the area of crime, undoubtedly he will reply, "Fear of physical assault," "robbery." This is to be expected. However, what most people do not realize is that much of our street crime is directly linked to organized crime, perhaps a less obvious, but no less deadly aggressor. For example, the narcotics-crime crisis we are experiencing today—locally and nationwide—is intimately connected with syndicated crime. Drug abuse in our Nation has increased dramatically in the last 3 years. It is estimated we have between 5,000 and 10,000 drug addicts in the Washington, D.C., area alone, and an alarming number of these are in their teens.

Organized crime has deeply penetrated broad segments of American life, making its influence felt in our great cities, in suburbia, and even in our smaller cities. Its economic base derives from illegal gambling, the numbers racket, the importation of narcotics, and even to underwriting the loansharking business and participating in fraudulent bankruptcies.

President Nixon defined the broad base of the organized criminal activity very well when he said:

> To achieve his end, the organized criminal relies on physical terror and psychological intimidation, on economic retaliation and political bribery, on citizen indifference and governmental acquiescence. He corrupts our governing institutions and subverts our democratic processes.

In other words, organized crime leaves no area of human endeavor untouched by its corruption.

Estimates of the "take" from illegal gambling alone in the United States runs anywhere from $20 billion, which is over 2 percent of the Nation's gross national product, to $50 billion, a figure larger than the entire Federal budget for fiscal year 1951.

One of the most important aspects of the bill is that dealing with bombing.

Since the middle of 1969 an unprecedented wave of explosive bombings has occurred across the Nation. The targets of these terroristic acts include almost every type of public and private institution, but the attacks have concentrated most heavily on police stations, court buildings, corporate offices, military facilities, and college campuses.

A recent 18-month survey by the U.S. Treasury Department showed the following statistics:

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|---|---|
| Bombings (explosive, incendiary) | 4,330 |
| Attempts to bomb | 1,475 |
| Threats to bomb | 35,129 |
| Total bombings, attempts or threats | 40,934 |

The General Services Administration reported 46 threats to bomb Federal buildings in a 12-month period ending June 30, 1969, and 383 bomb threats in the corresponding period ending June 30, 1970. Actual bombing and arson incidents in Federal buildings increased from 13 in the 12-month period ending June 30, 1969, to 38 in the corresponding period in 1970. Losses in property damage increased accordingly from $7,250 to $612,569. The General Services Administration estimates that 130 evacuations of Government personnel resulting from the receipt of bomb threats during January to June 1970, cost the Government $2.2 million in man-hours lost—a loss far exceeding the reported loss in property damages. This needless waste cannot be tolerated.

A total of 333 bombing incidents were reported to the FBI from January 1 through September 11 of this year. Of these, 25 were on college campuses and 11 were near campuses or in college towns. During the last school year, there were 14 bombings and 246 arson incidents on campuses.

The tragic death of Prof. Robert Fassnacht in an explosion at the University

of Wisconsin on August 24 shocked the Nation.

The antibombing provisions of this bill are vitally needed.

I am proud and pleased that the Judiciary Committee has included within its recommendations to the House two proposals which I introduced and have supported.

I proposed extended terms of imprisonment for habitual offenders convicted of felonies in Federal courts. This would allow Federal judges to deal more severely with those hard-core professional criminals who pose a real and continuing threat to society.

Second, I sought to prohibit the investment of income derived from illegal activities in legitimate established business enterprises. In addition, I would broaden and clarify the jurisdiction of Federal investigators to identify the illegal sources of revenue of the organized criminal elements.

Among its other aspects, the Organized Crime Control Act:

Provides secure housing facilities for Government witnesses in organized crime investigations and prosecutions on both the State and Federal levels.

Replaces the old immunity statutes with a single law saying that testimony given by an immediate witness cannot be used against him. However, it leaves the Government free to prosecute him on the basis of other evidence it gathers elsewhere.

Extends Federal jurisdiction over illegal gambling to include all such activities in operation for more than 30 days or from which gross revenue is $2,000 in any single day, involving five or more persons. It also provides penalties for participation in which activities of up to $20,000 in fines, and/or up to 5 years imprisonment. This is one of the bill's most significant provisions, for the financial mainstay of organized crime is gambling. The revenues of gambling net the Cosa Nostra between $7 to $50 billion per year which helps underwrite its activities in the field of narcotics.

Furthermore, the committee has recommended provisions which are designed to assist the States to regulate more effectively the sale, transfer, and other disposition of explosives within their borders, prohibiting distribution to persons under 21 years of age, drug addicts, mental defectives, fugitives from justices, and persons indicted or convicted of certain crimes.

In addition, the Federal criminal law is strengthened with respect to the illegal use, transportation or possession of explosives, including incendiary devices. In addition to increasing present penalties for the illegal use of explosives, the scope of the Federal law is expanded to cover malicious damage or destruction by explosives to Federal property or property of recipients of Federal financial assistance.

The bill proscribes malicious damage or destruction by explosives of real or personal property used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce. The death penalty is extended to new offenses added under this title.

In 1965, the President called together the National Crime Commission to find out why organized crime was growing despite the Nation's efforts to arrest its development. In reply this Commission identified a number of factors: Lack of resources, lack of coordination, lack of political and public commitment, failure to use criminal sanctions. But the major legal problem contributing to its growth was attributed to "defects in the evidence-gathering process." The Organized Crime Control Act of 1969 is an excellent effort to correct these defects on the Federal level.

The crime threat today is urgent. To overcome it we must be willing to fight on all fronts. We must seek and support legislation such as the Organized Crime Control Act of 1970, which will correct our criminal procedures and improve our evidence-gathering methods. We must—if our desire to stamp out crime is as strong as our words—make sure that we have the means and the know-how to combat society's primary threat today.

Mr. SCHEUER. Mr. Chairman, we have heard repeated allegations here this afternoon that what the American people want is a tough, hard-hat bill on organized crime. I am not so very sure of that.

I represent a district which is probably as agonized by urban problems, by violent street crimes, by drug addiction, by gambling that takes out of that community as much as welfare payments bring into it, as any district in America; and I have heard very little sentiment about a hard-hat bill on organized crime.

I believe what the people of our country want is a bill that gives them some security in the streets, security in their homes, serenity, peace, freedom from the fear of violent personal attack. They do not know much about the details as to how they are going to get that, but I believe what they want is results, and effectiveness, and not a lot of hard-hat oratory that is going to be awfully soft on results a year from now when we come to appraise what we have done, assuming this bill passes.

Yesterday the gentleman from Iowa (Mr. KYL) suggested in a quotation from Alexander Hamilton that in a period of violence and lawlessness people are willing to become less free in order to become more safe.

I share with my colleagues, the gentleman from Texas (Mr. ECKHARDT), the gentleman from New York (Mr. RYAN), the gentleman from Michigan (Mr. CONYERS), the gentleman from Illinois (Mr. MIKVA), and my Republican colleagues also, their deep reservations about some of the grave constitutional issues which have been raised in respect to this bill, including the special offenders sentencing provision, the death penalty for the illegal use of narcotics, the creation of grand juries with powers to accuse public officials without an opportunity for rebuttal, the litigation on sources of evidence, and the like. But I must say, out of respect for the anxieties of my district, if I believed that by eroding somewhat the civil liberties, the civil rights and the constitutional rights which this bill would envisage—if I thought it would work—I might reluctantly be willing to sacrifice some of our freedoms for the serenity, for the peace of mind, for the security in the streets and in the homes that the American people desperately want and that the people of my ravaged district in the South Bronx demand and pray for as a matter of life and death.

However, I fear that this bill, with all due respect to the venerable and beloved chairman of the committee and the diligent and highly professional members of the majority and minority, and with respect and gratitude to them for many of the highly effective and professional pieces of legislation that they have presented to this House in months and years gone by, I suggest that this bill is an exercise in waste, in futility, and in frustration that will come back to haunt us in years to come, because, Mr. Chairman, this bill will not work. It is a waste because it is diverting us from the real challenge that lies ahead of improving the entire length and breadth of the criminal justice system and improving the effectiveness of our systems of detection and apprehension of criminals, which is what the people want; of prompt trial and conviction of the guilty and freeing of the innocent, which is also what our people want; and improvement of the systems of rehabilitation and correction that today are an outrage to the national conscience, where they take young amateurs and turn them into hardened professionals. That is what our people want and not hard-hat rhetoric that will not work.

The basic underlying philosophy of this bill is that nonvictim social conduct can be controlled and prohibited by more stringent penalties and more law enforcement. If there is one thing we know from 4,000 years of human history, it is that there are certain types of personal conduct that the law cannot reach.

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. SCHEUER. I am happy to yield to the gentleman from Michigan.

Mr. CONYERS. I think the gentleman is on the right track, because as we look at the statement and the purpose of the bill, it is premised on a theory that the Members may want to question; that is, that organized crime has been successful and that the law-enforcement agencies of this country have been unsuccessful because of the evidence-producing machinery that is available to the courts.

The CHAIRMAN. The time of the gentleman from New York has expired.

Mr. McCULLOCH. Mr. Chairman, although not requested, I would be glad to yield 2 minutes for the questioning of the gentleman from Michigan to be propounded to the gentleman from New York.

The CHAIRMAN. The gentleman from New York is recognized for 2 additional minutes.

Mr. CONYERS. Will the gentleman yield further?

Mr. SCHEUER. Yes. I am glad to yield.

Mr. CONYERS. Therefore, if we are able to strengthen the court machinery and the evidence rules, we will be able to diminish crime on an organized basis.

I think this bill is posited on a theory that could be challenged by a good many Members of this body.

Mr. SCHEUER. I agree entirely with the gentleman.

What is apparent from our history abroad and at home is that consenting adults will engage in sexual activities for remuneration, and they have for eons, and we cannot control that. If anybody here doubts it, let him take a walk with me through Times Square, and if he is not deaf, dumb, and blind, and palsied, he will get 15 propositions per block for the exchange of sexual services for pay.

For 4,000 years human beings have gambled. For that period of time they have also enjoyed mind-altering devices and substances. Alcohol, tobacco, and amphetamines have been legal in this country. Apparently we could not control the consumption of alcohol, and ultimately stopped trying.

We had a disastrous experience in demeaning the law which was created to control that particular type of conduct which some people considered antisocial, the consumption of a particular kind of mind-altering substance.

Mr. Chairman, it is perfectly clear that we cannot and will not control gambling, I do not care how punitive we get.

In Detroit earlier this year the Department of Justice sent in a great number of law-enforcement officers in a massive dragnet effort to help bring under control gambling, yet 10 days later a kid could have placed a bet on any Detroit street corner.

In New York City in the last year we have had 10,000 arrests of people engaged in the number rackets who sold more than $5,000 worth of bets a day. How many of those were convicted? One out of that number, for 1 year or more.

Mr. Chairman, I fear that this bill is stabbing in the dark at organized crime. While providing some more effective legal tools to gather evidence for prosecuting the syndicate criminal, the bill is clearly inadequate to the task of controlling organized crime. The simple fact is that we do not yet know precisely how to control the gambling, loan sharking, and narcotics activities on which organized crime feeds and flourishes.

Title VIII of the bill before us today recognizes the need for research on how we can evolve a rational national policy on gambling. That title calls for a comprehensive review of Federal and State gambling law enforcement policies and their alternatives. I applaud the establishment of such a Commission with the expectation that the Commission will and must deal with the question of legalization of certain forms of gambling in order to deprive its monopoly profits to organized crime. Considerable evidence indicates that legal penalties cannot and should not be used to regulate this type of human conduct. I would like to outline briefly some of the areas that need to be researched by this Commission.

The Commission should examine the effectiveness of legal prohibitions on gambling activity. As the Attorney General has pointed out, private citizens spend anywhere from $20 to $50 billion a year on various forms of gambling, despite legal restrictions on such activity in virtually every State. Even after concerted efforts accross the Nation at prosecuting illegal gambling, the practice continues unabated.

Nowhere in our Nation is there a purposeful political and judicial commitment to stamping out gambling.

We seem to have grossly overestimated the ability of criminal law to regulate this type of human conduct. If we cannot legislate this morality, if criminal penalties do not discourage people from gambling, then we must ask what kinds of activities do we want to deter or control, by means of criminal sanctions, and effective law enforcement.

The Commission should consider the consequences of legalizing various kinds of gambling, from off-track betting to casinos. The present criminal sanctions against gambling drive up the costs and increase the risks of those who take bets, so that only organized crime is willing and able to operate gambling enterprises.

Organized crime has driven out all competition, taking over $6 to $7 billion in monopoly profits.

The present system encourages bribery of law-enforcement officials since gambling operations cannot function without the cooperation of these officials. Legalization could destroy the monopoly grip of organized crime or gambling, cutting off their principal source of funds, and eliminating one of the primary motivations for corruption of public officials.

Legal outlets for gambling impulses have been provided for in England for many years, and in Nevada and Puerto Rico. New York State has recently legalized off-track betting. The Commission should examine how successful these experiences have been, using such studies as one planned by the National Institute of Law Enforcement and Criminal Justice in New York, to discover whether or not organized crime suffers when there is a legalized outlet for gambling. In New York, for example, it appears that, as opportunities for legal betting increase, the size and number of illegal bets decrease. The Commission should study the hypothesis that licensing, State or Federal supervision, and taxation are more effective methods of fighting organized criminal syndicates than outright prohibition of the activity on which they persistently feed.

Such alternatives for rational control of gambling would have a massive impact on our criminal justice system, freeing its resources and manpower to deliver really important law-enforcement services.

The Commission can insure an effective and carefully planned approach to exercising social control over gambling, and permanently removing it as a source of billion-dollar profits for organized crime.

This is the kind of Federal help our cities need. Yesterday, our distinguished colleague from Virginia (Mr. POFF) asked if we wanted a Federal Police Establishment so strong as to reach into local street crime. I say yes, enthusiastically. We want the Federal Government to provide the research assistance, the guidance, and the professional support that our cities and States so desperately need in improving their law-enforcement systems.

By way of summing up, I commend to the Commission's attention the following quotation from John Mack, director of the School of Social Study, University of Glasgow:

> Organized crime is produced by an overworked and over-reaching criminal law, which attempts and fails to regulate the private moral conduct of the citizen. When people are prevented by means of the criminal law from obtaining goods and services which they have demonstrated that they do not intend to forego, criminals will step in to supply those goods and services under monopoly conditions at high profit to themselves. This will lead to the development of large-scale organized criminal groups, which, as in the field of legitimate business, extend and diversify their operations, thus financing and promoting other criminal activity. It follows that direct action against the racketeers and mobsters by stepping up police activity, creating special organized crime groups, and similar measures, will have little or no effect on the criminal systems; and that any plan to deal with crime in America "must first of all face this problem of the over-reach of the criminal law, state clearly the nature of its priorities in regard to the use of the criminal sanction, and indicate what kinds of immoral and anti-social conduct should be removed from the current calendar of crime."

Mr. McCULLOCH. Mr. Chairman, I am pleased now to yield 4 minutes to the distinguished gentleman from New Jersey (Mr. HUNT).

(Mr. HUNT asked and was given permission to revise and extend his remarks.)

Mr. HUNT. Mr. Chairman, today let me say that I sat in this Chamber and listened to many arguments as to whether or not the current legislation now pending before this body is good, bad or indifferent. Undoubtedly, there will be a number of amendments offered to this bill. But in my estimation—and I back this with a number of years of actual experience in the law-enforcement field—I think this bill that has been produced is a very fine piece of legislation, long needed.

I do not care whether one talks about hard-hat rhetoric or what one talks about. When it comes down to protecting the life of American society, this is exactly the job of the legislative branch to make laws that will protect the people of this Nation and not to go around eulogizing those sob sisters and other people who will condemn it.

It has just been said that there were 10,000 arrests for one particular type of crime in New York City and only one conviction. When that statement is made one indicts the entire system of jurisprudence. I believe the gentleman from New York knows what I am talking about. However, I would question that one conviction out of 10,000 arrests.

Mr. Chairman, I am well acquainted with the members of the New York City Police Department. They do an excellent job and have done a very fine job over the years. It is a very difficult job for them to take this responsibility on and do an effective job. I do not want to see them indicted by saying that they

made 10,000 arrests and only obtained one conviction on one phase of criminal activity.

Mr. Chairman, it has long been known in this world that the morals of man has been the root and downfall of all societies. If one looks back in history one will find that 2,700 years before Christ the Persian armies used marihuana for the purpose of juicing up their troops to make them more ferocious in battle. But we have today many sob sisters who say, "We should legalize marihuana."

Mr. Chairman, how about the policeman, the law enforcement officer, the man who goes out every day of his life to protect society, who is sniped at, beaten and attacked and yet people have some uncanny way of winking at this. How about the fireman up on the 100-foot ladder but who is shot off the ladder while he is trying to protect the people and the property in that particular area?

I say to you gentlemen the bill that is now before this body has been needed, and sorely needed, for a number of years. It is about time that we got tough with them, the criminal element because the criminal has become very tough on society. We cannot permit this situation to continue to grow, because we have a Frankenstein on our hands. We must begin to correct this condition. If rhetoric cannot do this and if rhetoric has been used in the past and has not been successful, let us change the law and control the hoodlums more stringently.

Mr. SCHEUER. Mr. Chairman, will the gentleman yield?

Mr. HUNT. I yield to the gentleman from New York.

Mr. SCHEUER. Mr. Chairman, I agree with the gentleman at least in this one point, that we have the finest police force in the United States in New York City.

Mr. HUNT. I would not go that far, sir; they are a fine police department, excellent, but we have many fine police department in our country.

Mr. SCHEUER. I respect those 32,000 professionals, and I think our new police chief is as fine a law enforcement professional as there is in this country. And it is for this very reason that I want to see our police freed from the unfair burden of trying to enforce laws that nobody wants to see enforced, and that only lead to the corruption of the police department, which we have seen in New York by a very small percentage of the officers, corruption which has nevertheles affected the morale and the public reputations of the vast majority of the other high-principled police professionals.

The CHAIRMAN. The time of the gentleman has expired.

Mr. McCULLOCH. Mr. Chairman, I yield 1 additional minute to the gentleman from New Jersey.

Mr. HUNT. Mr. Chairman, I thank the gentleman for the additional time.

Mr. Chairman, in response to the statement made by the gentleman from New York (Mr. SCHEUER), I would ask the gentleman if the gentleman has consulted with the members of the New York City Police Department as to the merits of this bill?

Mr. SCHEUER. No, I have not.

Mr. HUNT. I suggest you do, because you will find a different story among those men who go out and lay their lives on the line for the protection of you, your loved ones, and for me.

Mr. SCHEUER. I can tell the gentleman that the District Attorney of Bronx County, Burton Roberts, and the assistant district attorney of New York County, Mr. Alfred Scotti, were quoted in the New York Times of September 15 of this year as saying that the way to free ourselves from the burden of organized criminal control of gambling is to legalize gambling.

Mr. HUNT. There are many of us who disagree with this, and I will cite you the story of Las Vegas. Perhaps the gentleman might like to use that as a sort of a symbol in setting a very fine example of legalized gambling, what it can actually do to those who go out there, and what they do, and what comes out of it. I do not believe that is a system we would like for this country.

Mr. SCHEUER. Las Vegas may do a poor job, but the Island of Puerto Rico has legalized gambling, and they are handling it very well.

Mr. HUNT. I am familiar with Puerto Rico, and I know that the gentleman from New York visits there quite often.

Mr. SCHEUER. Yes.

Mr. HUNT. And so do I.

Mr. SCHEUER. And it is a very clean operation.

Mr. HUNT. Well, that is a debatable question sometimes. Fine theory, but let us get this bill passed.

The CHAIRMAN. The time of the gentleman has again expired.

Mr. McCULLOCH. Mr. Chairman, I am pleased to yield such time as he may consume to the gentleman from South Carolina (Mr. WATSON).

Mr. WATSON. Mr. Chairman, I rise in strong support of this legislation.

(Mr. WATSON asked and was given permission to revise and extend his remarks.)

[Mr. WATSON addressed the Committee. His remarks will appear hereafter in the Extensions of Remarks.]

Mr. McCULLOCH. Mr. Chairman, I am very pleased to yield such time as he may consume to the distinguished minority leader, the gentleman from Michigan (Mr. GERALD R. FORD).

(Mr. GERALD R. FORD asked and was given permission to revise and extend his remarks.)

Mr. GERALD R. FORD. Mr. Chairman, I join the gentleman from Ohio (Mr. McCULLOCH) and the other members of the Committee on the Judiciary in support of this legislation. It is long overdue. I believe it will be a great help and assistance to law enforcement in this country, and I urge its adoption without amendment.

I do, however, want to speak out particularly for the antibombing measures which the committee added to the bill.

The senseless and terrifying wave of bombings which has swept the country simply must be stopped. While I have seen no complete statistics concerning these occurrences, we are all aware of the increasing scope and seriousness of this threat to our way of life.

Since the first of this year an explosion in San Francisco in a police station killed one officer and wounded six others; the Dorchester County Court House in Cambridge, Md., was ripped by a bomb; a blast by a time bomb heavily damaged an office building in Buffalo, N.Y.; and we all remember the recent bombing at the University of Wisconsin that took one life and caused extensive damage. I could go on citing the many horrible examples of this mania, but the headlines of our newspapers have made them familiar to us all.

The President on March 25 recommended that the Congress amend the provisions of the Federal criminal code to significantly expand the jurisdiction of the Federal Government to investigate and prosecute the perpetrators of these awful bombings. Later, additional legislative measures were recommended to provide effective checks on the procurement of explosive materials for illegal use. These latter provisions would operate through a system of licenses and permits. Licenses would be required of all manufacturers, importers, and dealers. Permits would be required of all users who depend on interstate commerce to obtain explosives. Records would be kept concerning transactions involving explosives and positive identifications of the parties would be mandatory. Explosives under this legislation could not be lawfully acquired by persons under 21 years of age, drug addicts, mental defectives, fugitives from justice or persons indicted for or convicted of certain crimes.

The measure which the House committee has approved contains those necessary provisions plus two additional items of great importance. The substantive jurisdiction of the Federal Government is expanded to insure that the FBI will have authority to investigate bombings of federally assisted institutions. The expertise of these investigators will thus be instantly available to bring to prompt justice those few who seem to be bent on trying to destroy our colleges and universities.

Another valuable addition is the provision authorizing the use of wiretaps to assist in the apprehension of the bombing violators. These wiretaps would be conducted under the same strict supervision and requirements that apply to the organized crime and other surveillances under current law. This necessary investigative tool would, I am sure, be utilized as judiciously and effectively as has been the cases in other important criminal investigations.

All persons who participated in preparing and securing committee approval of these important antibombing measures should be congratulated. I am looking forward to joining with the other Members of this body in voting for enactment of this vital legislation.

Mr. McCULLOCH. Mr. Chairman, I yield such time as he may consume to the gentleman from North Carolina (Mr. MIZELL).

Mr. MIZELL. Mr. Chairman, I rise in strong support of this measure.

Mr. Chairman, I rise today to commend the chairman and members of the House Judiciary Committee for reporting such a fine piece of legislation as the Organized Crime Control Act of 1970.

This bill provides some of the most effective weapons ever assembled to combat organized crime in the United States. The passage of this legislation will be conclusive proof that the restoration of law and order is not just a catch phrase in an election year, but a matter of national concern and an immediate goal of national policy in America.

After so long a time of looking the other way when crime is committed, it is good to see that the administration and the Congress are responding to a national mandate and facing up to organized crime in America.

It is a disgrace to allow the lords of organized crime to siphon billions of dollars from the American economy every year in illegal activties. I am glad to see a law with some real teeth in it.

The fear of crime in the streets, the incidence of corruption in Government and in business, the appalling rise in the crime rate over the last decade—none of these has any place in a society that cherishes its own freedom and respects its own laws.

I am confident that with more legislation like this Organized Crime Control Act of 1970, the battle against crime can be waged effectively and won.

(Mr. MIZELL asked and was given permission to revise and extend his remarks.)

Mr. McCULLOCH. Mr. Chairman, I yield such time as he may consume to the gentleman from Colorado (Mr. BROTZMAN).

Mr. BROTZMAN. Mr. Chairman, I urge the enactment of S. 30, the Organized Crime Control Act of 1970. Organized crime has become a cancerous element in our society which must be eradicated.

As a former U.S. attorney for Colorado, I can attest to the need for the bill now under consideration. Organized crime presents unusual problems to law enforcement officials. Its chain of command is closely guarded, and all too often only minor functionaries in the ladder of organized crime can be apprehended. Unfortunately the result is that while one petty hoodlum may be taken off the streets, the activities corrupting the very core of our society continue unabated.

S. 30 adds a number of significant tools to the arsenal of law enforcement officials. The Federal immunity statute is strengthened in an effort to aid organized crime operatives to testify against their superiors. The bill will enable effective displacement of the privilege against self-incrimination by granting protection coextensive with the privilege; that is, protection against the use of compelled testimony directly or indirectly against the witness, in a criminal proceeding. Also, the present civil contempt practice with respect to recalcitrant witnesses in Federal grand jury and court proceedings is codified.

One of the problems encountered when law enforcement officials seek information on organized crime is the fear experienced by those persons who are in a position to assist in an investigation. The bill authorizes the Attorney General to protect and maintain organized crime witnesses and their families.

Special provisions are included to control syndicated gambling and racketeering. It is in these areas, along with drug abuse, that organized crime is able to furrow deep into a community and gain a virtual lien on lives of countless individuals. Those who are seeking to break the shackles of poverty become the unwitting accomplices of fat-cat mobsters, and in the end, they and their families are condemned to either a life of privation or a life of crime.

Mr. Chairman, the passage of S. 30 would offer renewed hope to a citizenry growing tired of having its resources tapped by persons who have a callous disregard for law and common decency.

Mr. McCULLOCH. Mr. Chairman, I have no further requests for time at this immediate moment.

Mr. CELLER. Mr. Chairman, how much time do I have remaining?

The CHAIRMAN. The gentleman from New York has 3 minutes remaining.

Mr. CELLER. Mr. Chairman, I yield myself 2 minutes.

Mr. Chairman, this bill contains 148 pages. It has 13 titles. It is bound to have some defects. We are only human, and it is human to err. But I hope that these imperfections will not be so exaggerated in the minds of some of the dissenting Members that we have heard here today and yesterday as to tincture their points of view as to the bill itself.

Mr. Chairman, I think the bill is sound despite some of the irregularities that may be contained in the bill. We were faced with a gigantic job—and I want to emphasize that—a gigantic job. Our task was not easy. Indeed, it was a very difficult task. But, nonetheless, we faced that task with, I think, a degree of courage and with some wisdom. We worked hard—we really worked hard and labored. We rolled up our sleeves proverbially and we worked for almost a solid week including a night to be able to fashion the bill that you now have before you.

Mr. Chairman, I want to pay my respects to the subcommittee that handled the bill—Messrs. RODINO, ROGERS of Colorado, DONOHUE, BROOKS, KASTENMEIER, EDWARDS of California, McCULLOCH, MacGREGOR, McCLORY, RAILSBACK, POFF, and HUTCHINSON.

All of these gentlemen exerted the most patient efforts in rounding out a bill. There were all manner and kinds of points of view expressed and they were materially discussed. Some were accepted and some were rejected.

The CHAIRMAN. The time of the gentleman from New York has expired.

Mr. CELLER. Mr. Chairman, I yield myself the remaining minute.

Mr. Chairman, as I said, some of the provisions were rejected and some of them were accepted. There was a conciliatory spirt which brought this bill about. So it was with the full Committee on the Judiciary. They accepted it with very little debate because they had very great faith and confidence in the subcommittee. I pay great tribute to that subcommittee as do the other members of our Committee on the Judiciary.

Mr. Chairman, it is for this reason that I do hope that this bill will pass with no amendments. We are going to try to make it impervious to amendment because we think it is a well rounded bill.

The CHAIRMAN. The time of the gentleman from New York has expired.

Mr. McCULLOCH. Mr. Chairman, does the minority have any time remaining?

The CHAIRMAN. The minority has 14 minutes remaining, but the Chair understood the gentleman to say that he did not have any further requests for time on his side.

Mr. McCULLOCH. That was at that particular time, Mr. Chairman.

Mr. Chairman, I now wish to yield to the gentleman from Ohio (Mr. MINSHALL) such time as he may desire.

Mr. MINSHALL. Mr. Chairman, I heartily and strongly endorse the comments that the chairman of the great Committee on the Judiciary has made and also the ranking minority member, my good friend, the gentleman from Ohio (Mr. McCULLOCH).

Mr. Chairman, I have every confidence that this bill will be passed practically unanimously by this House.

I most strongly support passage of S. 30, an essential, long overdue stride toward demolishing organized crime.

For years these expertly organized, highly sophisticated criminal syndicates have bled our citizens, literally and figuratively, not only through overtly criminal acts but covertly as well, by invading and corrupting segments of nearly every legitimate enterprise.

Organized crime in America has flourished into a multibillion-dollar business, dipping into the pockets of every person in this Nation. It is shocking to realize that even the most law-abiding of us unwillingly and often unwittingly is forced, by the very fact of its all-pervasive nature, to pay into the coffers of organized crime. This theft occurs all too frequently in the higher prices we must pay for legitimate goods and services supplied by firms strong-armed into paying "protection" money to organized crime syndicates. Organized crime most certainly hits America squarely in the pocketbook in the tax money required to fight its illegal operations.

As has been pointed out, this bill is not a panacea, but I am convinced it will provide a new arsenal of modern crime-fighting weapons to law enforcement agencies and prosecutors.

I am personally very pleased that there are incorporated in this bill two pieces of legislation of which I am co-sponsor. One is H.R. 16699, to strengthen laws and penalties dealing with illegal use, transport or possession of explosives. The other is H.R. 18573, to regulate import, manufacture, distribution, storage and possession of explosives, blasting agents and detonators. As the first Member of the House to recognize the growing problem of terrorist bombings, I introduced early last spring H.R. 16481, the first bill dropped in the hopper to put real muscle in criminal statutes pertaining to explosives. I was pleased when the administration proposed the legislation

now incorporated in this bill and, as I have mentioned, was quick to cosponsor it.

I am sure that the House will join me in giving this important measure an overwhelming vote of approval and I urge conferees to act promptly so that it will be enacted into law with a minimum of delay.

(Mr. MINSHALL asked and was given permission to revise and extend his remarks.)

Mr. McCULLOCH. Mr. Chairman, I yield to the gentleman from Michigan (Mr. BROWN) such time as he may desire.

Mr. BROWN of Michigan. Mr. Chairman, I thank the gentleman from Ohio for yielding.

Mr. Chairman, I rise in support of this legislation. I reject the arguments of those who criticise it on the basis that it is repressive or that it improperly equates the rights of the individual versus the rights of society.

I especially commend the committee for including in the bill title XII which provides for a National Commission on Individual Rights. I think that this provision certainly lends balance to the legislation for any who think it might have been unbalanced without the provision. I highly commend the committee for its work and urge all of my colleagues to support the legislation.

(Mr. BROWN of Michigan asked and was given permission to revise and extend his remarks.)

Mr. McCULLOCH. Mr. Chairman, for various reasons I have not participated too much in this debate, but I have been an earnest listener. I am pleased with the work that the members of the House Committee on the Judiciary, on both sides of the aisle, did in this important field. Few, if any, committees in the time that I have been in the House have had more difficult and more controversial legislation than the Judiciary Committee, and it has used its power and authority in a noble way under the leadership of the very able member of the committee from New York.

I yield 2 minutes to the gentleman from Florida (Mr. SIKES).

(Mr. SIKES asked and was given permission to revise and extend his remarks.)

Mr. SIKES. Mr. Chairman, I appreciate the courtesy of the distinguished gentleman from Ohio in yielding to me at this time. I am confident there will be strong support for S. 30. The control of organized crime in the United States is a matter of very great personal interest to each of us. The extremely rapid increase in crime, much of it unpunished, is a shocking indictment against efforts toward crime control. Criminals must be apprehended and punished. It appears that stronger laws are necessary to bring this about, and we in Congress should provide whatever legislation is needed to assist in this effort.

It must be borne in mind that the passage of laws is not all that is required. Congress cannot enforce the law, nor even require its enforcement. That is the responsibility of the administrative branch of Government and the law enforcement agencies. Nevertheless, the Congress should leave no stone unturned in our efforts to insure that every step within our power has been taken to curb this growing threat to the domestic peace and to the internal security of the Nation. Therefore, I support the measure before us.

I have another purpose in asking to be heard on the bill. I note section 1101 which appears on page 152 of the bill and which reads as follows:

SEC. 1101. The Congress hereby declares that the purpose of this title is to protect interstate and foreign commerce against interference and interruption by reducing the hazard to persons and property arising from misuse and unsafe or insecure storage of explosive materials. It is not the purpose of this title to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, storage, or use of explosive materials for industrial, mining, agricultural, or other lawful purposes, or to provide for the imposition by Federal regulations of any procedures or requirements other than those reasonably necessary to implement and effectuate the provisions of this title.

I am particularly interested in the sentence which states that—

It is not the purpose of this title to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, storage, or use of explosive materials for industrial, mining, agricultural, or other lawful purposes.

It is my understanding that the committee has included in its bill language which specifically exempts small arms ammunition and components from the restrictive features of the measure. I am interested in hearing the comments of the distinguished gentleman from New York, the chairman of the Committee on the Judiciary, on this subject. It is one of very great interest to law-abiding weapons-owning sportsmen who engage in ammunition reloading and in other uses of ammunition components. Will the distinguished chairman tell us specifically what exemptions this bill contains to protect those who have lawful use for explosives, such as reloaders of ammunition or those using explosives for agricultural purposes.

Mr. CELLER. The specific answer is found on page 168, subdivision 845 entitled "Exceptions; relief from disabilities." Line 12 and following reads—

"(a) Except in the case of subsections (d), (e), (f), (g), (h), and (i) of section 844 of this title—

Those are the criminal sections—

this chapter shall not apply to:

"(4) small arms ammunition and components thereof;

"(5) black powder in quantities not to exceed five pounds;"

I think that answers your question.

Mr. SIKES. Then lawful users in these fields are specifically exempt under the bill?

Mr. CELLER. With respect to those sections, that is correct.

Mr. SIKES. I appreciate the information given me by the distinguished chairman.

Mr. McCULLOCH. Mr. Chairman, I am pleased to yield to the chairman of the Joint Commission on Atomic Energy, the gentleman from California (Mr. HOLIFIELD) such time as he desires.

Mr. HOLIFIELD. I thank the gentleman from Ohio for yielding to me.

Mr. Chairman, I take this time at the request of a colleague of mine, Mr. HANNA of California, to make a statement in his behalf. Yesterday when the present Member was occupying the chair, the rule was adopted to consider this bill, and shortly thereafter a unanimous consent request was propounded to take the bill up immediately without the usual normal procedure of laying over for 24 hours. Mr. HANNA who is in California today is very much interested in this bill and had planned to be here to vote for it. But when he was apprized that the Organized Crime Bill of 1970 was to be considered today, ahead of the normal 24-hour layover time, he realized that he could not get back from California in time to vote for the bill. He phoned me and asked me to make a statement that were he here and present, he would vote for the bill and support the committee in its amendments. He has requested an affirmative pair for the bill. I make that statement in his behalf.

Mr. Chairman, I also want to say that I am supporting this bill. I have tremendous confidence in the gentleman from New York (Mr. CELLER) and the gentleman from Ohio (Mr. McCULLOCH). I believe that under the circumstances now facing our Nation, with the hazards of organized crime and criminal acts which are occurring, that we must take steps to control this menace to our society and to our way of life. Therefore, I, too, will support the bill.

Mr. FLOWERS. Mr. Chairman, will the gentleman yield?

Mr. McCULLOCH. I am pleased to yield to the gentleman from Alaabma, a member of the committee.

Mr. FLOWERS. Mr. Chairman, I thank the gentleman from Ohio, my colleague, for yielding.

Mr. Chairman, I rise in support of the bill.

[Mr. FLOWERS further addressed the Committee. His remarks will appear hereafter in the Extensions of Remarks.]

(Mr. FLOWERS asked and was given permission to revise and extend his remarks.)

Mr. FOUNTAIN. Mr. Chairman, will the gentleman yield?

Mr. McCULLOCH. I yield to the gentleman from North Carolina.

(Mr. FOUNTAIN asked and was given permission to revise and extend his remarks.)

Mr. FOUNTAIN. Mr. Chairman, I rise in support of S. 30, the Organized Crime Control Act of 1970.

The time has long since come when the Federal Government should act to adequately protect the law-abiding citizens of our country from the vicious effects of organized crime.

Throughout much of this century, our law-enforcement officials at all levels have been attempting to combat the hoodlums of the Mafia or La Cosa Nostra. Unfortunately, they have never been able to achieve complete success.

And so, by now it should be crystal clear that our law-enforcement agencies do not have the proper legal tools to do the job. Times have changed; 19th century legal concepts are sometimes just not adequate to prosecute today's sophisticated criminals.

We must give these agencies the necessary tools and support them in the struggle. Otherwise, organized crime will eventually destroy us.

I have never been able to understand our seeming reluctance to move swiftly and decisively to root out the growing cancer of organized crime in our country. In the beginning, the job would have been comparatively easy, but we have been dilatory, sitting on our hands while many organized criminal groups have grown and prospered, and now we have reached the point where organized crime is big business—some say as big as $60 billion a year, as big as the top nine or 10 legitimate businesses in our country.

There are distressing signs that organized crime is beginning to undermine some of our basic economic and political institutions. It is estimated that $2 billion a year is spent on buying immunity from the law by bribery. Organized crime has penetrated almost every type of business and industry you can name, imperiling our heritage of responsible competition and legitimate private enterprise.

We have reached the point where the Mafia's narcotics traffic has established distribution centers in every State, in fact, in every sizable town and city in our country—with consequences that all can see on the youth of today.

But what perils do gangsters face for these organized depredations on society. The record shows that only a comparative few are successfully prosecuted under present laws, and most of those who are prosecuted get light sentences—5 years or less.

How long are we going to stand for it? How long are we going to let the majesty of American law be flouted by mobsters and gangsters who do not stop short of bribery, torture, and murder in order to widen the empires of crime.

Although S. 30, under consideration now, may not in all regards be what I would prefer, it is nevertheless needed and necessary legislation. Our responsible law enforcement officials must have this support in order to combat the crime wave more effectively.

Traditional approaches to fighting organized crime need updating and improvement. S. 30, having been carefully considered by committee, is a big step in the right direction.

S. 30 does not directly attack the problem of crime in the streets—a problem of pressing urgency, nor should it. One bill cannot address itself to all facets of crime. But if, for example, our law enforcement officials are able to more successfully combat the narcotics traffic under the provisions of this measure, then I think we shall see salutary effects as fewer dope addicts are created to rob and steel and burglarize and attack.

Let us enact this measure into law without delay. The immensely wealthy criminal masterminds of America, whose tentacles stretch into every corner of our land, can be brought successfully under attack in no other way.

Mr. GONZALEZ. Mr. Chairman, if it is in order, will the gentleman yield for a question on the bill?

Mr. McCULLOCH. I yield to the gentleman for one question at this late hour.

Mr. GONZALEZ. Mr. Chairman, I wanted to do this yesterday and did not have the opportunity. This has to do with the first title on the question of the special grand jury. In the House version, it is defined as a grand jury that would be reporting on noncriminal activities. It seems to me there is a contradiction right there in the basic definition and function traditionally of the grand jury, a criminal matter. Here apparently, from the language referring to noncriminal matters, the House version as compared to the Senate version has one impressive deletion, in which it takes out the reference to the elective public official. My question is: Does this mean then that the grand jury in rendering its report on noncriminal activities conceivably could have a big impact in a community? Only in respect to an appointive and not elective officials?

Mr. McCULLOCH. Mr. Chairman, I think the question might be, in part, answered by the feeling of the members of the committee that the members did not wish to put in the possession of the grand jury clubs with which certain people might be bludgeoned when they were not in a position to defend themselves. There was no other motive of which I know—

Mr. Chairman, as we are at or near the end of the general debate on this most important legislation, I am reminded of the words of a great American poet, James Lowell, who more than 100 years ago had this to say:

New occasions teach new duties; Time makes ancient good uncouth;
They must upward still, and onward, who would keep abreast of Truth.

Mr. BROOMFIELD. Mr. Chairman, organized crime has been among the most perplexing problems of the past decade. It is, I admit, difficult to detect a pusher beneath a gray flannel suit or a loan shark behind a mahogany desk. Nor is it a simple task finding a pimp in a modern office building or a bookie in a fine, old hotel. In the past, Mr. Speaker, we have not been able to separate organized criminals from their masks of legitimacy. The Organized Crime Control Act of 1970 will be a first step in our effort to strip these masks. It is not a perfect bill, it is not a comprehensive bill, but it will help us slow down the infiltration of our courts and corporations by the rackets.

Mobsters sell heroin and cocaine to hopeless, young ghetto residents, loanshark honest workingmen who cannot get credit, bribe enforcement officers and judges, take millions annually from numbers and prostitution, cheat businessmen by extortion and the Government by tax evasion. Yet, widespread as their activities are, we have not been able to isolate or prosecute them. It seems as though the newspapers know the names of every gangster in the country. We too know the names, but we cannot find convicting evidence. The mobs have turned our laws to their own advantage when they could and disregarded them when they could not. Simply stated, traditional methods have failed to distinguish between what appears legitimate and what is legitimate.

The Organized Crime Control Act of 1970 will strengthen our legal means for obtaining evidence against seemingly legitimate gangsters. It will afford immunity from the use of testimony, but not necessarily from prosecution, consolidating and expanding Federal coverage of immunity laws at the same time. It would also imprison without bail witnesses unwilling to reveal important evidence and establish special grand juries to investigate racketeering and public corruption. Further, the bill would strengthen prosecutions for perjury and provide protection for State or government witnesses. Finally, the Control Act would authorize pretrial depositions of government witnesses. Each of these steps will assure the easier collection of evidence against organized criminals without, I might add, endangering their legal rights.

In two other areas the bill makes substantial progress against organized crime: First, Federal jurisdiction over syndicated gambling is greatly expanded; second, the infiltration of legitimate enterprises by the rackets comes under Federal law if it affects interstate or foreign commerce.

In an area unrelated to organized crime, the bill severely increases penalties for the illegal use of explosives. This is, of course, a much-needed provision in light of numerous recent terrorist bombings.

Mr. Chairman, I believe the steps outlined in this bill relating to the collection of evidence are of extreme importance to our efforts against organized crime. Those relative to gambling and legitimate enterprises are, I assume, mere stopgap measures—to be used until we can develop a more comprehensive method for dealing with the rackets. Even these measures, however, will be necessary if we are to stem the rise of organized crime before it gets any further out of control.

Mr. UDALL. Mr. Chairman, today we consider the Organized Crime Control Act of 1970, an important bill that I support. This legislation will give us valuable new tools in the battle against syndicated crime. I have been a prosecutor in my hometown of Tucson and I can tell you from firsthand experience that the strength of organized crime is tremendous. Today, by giving the Attorney General the power to use the Antitrust Division in the struggle against the syndicate and by outlawing the establishment or purchasing of legitimate businesses by racketeers, I believe we give new hope to the success of our common cause.

But, Mr. Chairman, there are certain features of this bill that disturb me. In our zeal to root out those who engage in organized crime, I am afraid that we are making inroads on rights that have been established by many years of con-

stitutional litigation. I would like to go on record at this time in opposition to these provisions and I express the hope that my colleagues will amend out of this bill the objectionable parts.

The first thing we do is to authorize special grand juries to make reports concerning noncriminal misconduct by government officials relating to organized criminal activity. An individual accused by such a grand jury has no real access to an appellate court to clear himself of resulting charges. Although a person named in a report is given an opportunity to testify and present witnesses, the value of the right is undercut since he cannot do so until after the report is made, he never knows the identity of his accusers, he has no right to compel the presence of witneses and he cannot cross-examine.

Moreover, a report may be made public if it is supported by merely a preponderance of the evidence and a detailed record of the proceedings need not be kept. This to me is fundamentally unfair. One might answer by pointing out that this is not a criminal proceeding in the strict sense of the word and that constitutional protections therefore need not be observed. I would counter by pointing out that the effect of an indicting report can only be loss of employment and an attaching stigma for life. To my mind this is punishment enough to observe the strictest rules of due process as spelled out by the Constitution.

Another objectional provision is that which authorizes a court to confine witnesses who refuse to testify in a court proceeding or before a grand jury. Under the House version of this bill, confinement in these instances would in some cases be limited to 18 months and in others be open ended. The Supreme Court has said that any activity resulting in confinement for a period in excess of 6 months is to be considered a serious criminal offense and must be dealt with by a trial by jury. Here we are giving carte blanche authorty to a judge to preemptorily confine a recalcitrant witness for 18 months without attaching any constitutional protections.

Title X of this bill authorizes extended sentences of up to 25 years for offenders defined to include: First, a three-time felony offender who has previously been incarcerated; second, an offender whose felony offense was part of a pattern of criminal conduct, and third, an offender whose criminal offense was committed in furtherance of a conspiracy to engage in a pattern of criminal conduct. While the intent of this provision is good, I must object to the way in which a judge is authorized to make his findings.

First, the impact of the measure is to make the offender guilty of an additional crime and a judge may sentence a man merely by finding that he is guilty by a preponderance of the evidence. Second, hearsay and other improper evidence may be considered by the judge in finding guilt.

What we do then, Mr. Chairman, is to allow the government the luxury of putting a man away as a "special" offender without having to prove guilt of the offense beyond a reasonable doubt and without having to adhere to the normal rules of evidence that govern criminal trials.

In this time of high crime rates and civil unrest it is understandable that this body will look for more effective legislation to deal with what some describe as a desperate situation. Notwithstanding this state of affairs, I think it is important for us to remain "strict constructionists" in our legislative efforts. Unfortunately, as this bill exemplifies, legislative bodies all over the country are passing criminal laws without giving serious thought to the inroads that are being made on constitutional rights.

When I am confronted with the problem of voting for a bill that contains more good than bad, as I believe this bill does, I usually rationalize the presence of unwise or unconstitutional provisions with the thought that the courts will take care of them. But I think that we should keep in mind that courts change the way times change, and a court of today may be disposed to uphold a law that a court of yesterday saw fit to strike down. This may be even more true when we inundate courts with tough constitutional questions. The courts, like the Chief Executive, do not like to be put in the position of striking down acts of Congress like a woodman fells trees.

The upshot of all this may be that we will end up with a legal and constitutional structure that none of us would like to see. I believe it was Thomas More who said:

When you strike down the law to get at the devil, don't be surprised if the devil later uses the absence of law to get at you.

Mr. BROCK. Mr. Chairman, someone once said that crime is the left-hand side of human endeavor. Today, however, one might mistake it for the right side. Organized crime—often referred to as the Cosa Nostra, the syndicate, or the Mafia—in money terms is one of the world's largest businesses. Estimates of its annual take go as high as $30 billion, making it as large as A.T. & T., GM, Standard Oil of New Jersey, Ford, IBM, Chrysler, and RCA combined. The illegal activities of the major syndicates include gambling, loan sharking, narcotics trafficking, labor racketeering, and prostitution. It has infiltrated an estimated 5,000 business concerns and controls thousands of public officials.

Under the Constitution, the primary role in combating crime is assigned to the States. However, the massive increase in crime and the growing interstate scope of its operations have prompted my support of several major anticrime bills, among them the Organized Crime Control Act of 1970. I was particularly gratified to have the regulation of explosives legislation which I sponsored included in this legislation. A source of deep concern to me has been the lack of protection of our children in schools and on the campuses from the terrorist who resorts to the bomb and the anonymous threat. This and my concern over the extension of the corrupting force of organized crime into American society calls for my vigorous support of the Organized Crime Control Act of 1970 which I believe will give Federal authorities the power to take decisive action.

Mr. FULTON of Tennessee. Mr. Chairman, today, the House is being asked to vote on one of the most controversial proposals submitted to the Congress by the administration to date.

The bill before us is the result of months of hearings, executive sessions, discussions, arguments and ultimate agreement.

It contains provisions which many Members feel are an absolute must and which others fear may infringe on the rights of our private citizens.

Nonetheless, we have a bill before us. It is a broad bill which is designed to give the Federal Government more power, authority and instruments with which to combat organized crime—thoughtful, malicious, and willful crime, carefully planned and perpetrated on the decent and law-abiding majority of American citizens.

The House Judiciary Committee has worked very diligently on this legislation in an attempt to modify some of the constitutional problems which were raised in S. 30 as passed by the Senate.

One of the provisions not contained in S. 30 is a section added by the Judiciary Committee, title XI, which establishes Federal control over interstate and foreign commerce in explosives. This section embodies legislation which I was privileged to cosponsor with the gentleman from New Jersey (Mr. RODINO).

Title XI establishes a federal system of licenses for the sale or transportation of explosives, prohibits certain uses of explosives and authorizes the death penalty for violations of the explosives law which result in death. It also authorizes the FBI to investigate campus bombings if the university is receiving Federal financial assistance.

This obviously is not going to solve the bombing menace or put a complete halt to the recent wave of lunatic bombings which have been occurring across the Nation. But it is another tool available to our State and local law enforcement officers to combat this madness.

Mr. Chairman, I commend the committee for inclusion of this provision in the organized crime bill and urge that the House pass the entire package.

Mr. MINISH. Mr. Chairman, I rise in support of S. 30, the Organized Crime Control Act of 1970. We all are aware that crime is on the increase and that we must act before it is too late to stem this lawlessness.

We hear all too frequently about the rights of the accused; little is said about the rights of innocent citizens who cannot leave their homes at night for fear they may be mugged, attacked, violently robbed, or maimed. We hear much about the rehabilitation of the criminal, of his need to learn a better life style; we hear little about the life style of the victims, those who have suffered financial, physical or familial losses.

We are too swift to treat others as we want to be treated; the criminal element will not respond in kind to this treatment. I do not believe that the bill we are considering today will put innocent men in jail or abridge the freedom of hon-

est individuals. It does not remove the bill of rights coverage from accused persons; it does, however, improve the system whereby criminals can be prevented from victimizing society.

Title I of the measure provides for grand jury procedures in high-crime areas, providing the grand jury with greater autonomy and permitting its convocations for a longer period of time.

Title II provides for a uniform immunity statute in place of the 90 various statutes that would presently apply.

Title III concerns the treatment of recalcitrant witnesses, who under this provision can be placed in jail during the length of the grand jury meetings.

Title IV would facilitate Federal perjury prosecutions and establish a new false declaration provision.

Title V would provide protected facilities for government witnesses in order to protect their safety.

Title VI would authorize the government to preserve testimony by the use of depositions in criminal proceedings.

Title VII would overrule Supreme Court decisions concerning the gathering and usage of electronic evidence, thereby providing a balanced law in this area.

Title VIII, a multifaceted provision, concerning itself with syndicated gambling.

Title IX develops a new criminal code chapter entitled "Racketeer Influenced and Corrupt Organizations"; it provides an easier standard of proof against organizations believed to be racketeer influenced.

Title X authorizes special sentencing for dangerous offenders, protecting society from the criminal recidivist.

Title XI regulates explosives, their licensing, manufacture and sale.

Title XII establishes a National Commission on Individual Rights, empowered to conduct a comprehensive study and review of relevant Federal laws.

Title XIII contains a severability clause.

Mr. Speaker, this bill would amend a number of existing criminal statutes, as well as providing further authority to deal with the problems or organized crime.

Unless we want to teach our law-abiding citizens that crime pays better than working, we must effectively reverse the increase in criminal acts of violence against innocent and productive members of our society. Otherwise, we will soon discover that only the vicious and the lawless elements of society have survived.

As criminals become more sophisticated and their techniques and criminal activities become more ruthless and advanced, it is necessary to update and improve our criminal laws. Failure to do so will result in rampant crime and enfeebled law enforcement.

I urge my colleagues to prevent further inroads on our system of justice.

Mr. LEGGETT. Mr. Chairman, I rise in support of the Organized Crime Control Act of 1970. I think the committee is to be complimented on this bill. It is stronger, and yet less offensive from a civil liberties standpoint, than the bill passed by the other body.

It will provide a number of new and valuable tools for the control of organized crime. For many years it has been a scandal that the small-time crooks have been constantly in and out of jail, while the biggest and most vicious criminals have been able to live in luxury, untouched by the law. The problem of how to how these very elusive people with their batteries of high-priced legal talent, responsible for their acts without compromising essential justice is not a simple one. There is no simple and comprehensive answer. But this bill is a good partial answer; it will be useful.

Considerable publicity has been given to the antibombing provision. Unfortunately, it appears that bombing is becoming regarded as an act of political expression in some quarters. In a sense, I suppose it is a political act, but I cannot see that this makes it any the less criminal. On the contrary, in this case political motivation increases the criminality of the act.

A political bombing is criminal not only because of the life or property it destroys. In moral terms, it is doubly criminal because it adds to the tension and division within the country, thus leading to greater public tolerance of police repression, which in turn leads to more rebellion and possibly more bombings, and so on. This is quite another thing from Martin Luther King's civil disobedience, or from the hundreds of thousands of American citizens who came to Washington last November to express, peacefully and with dignity, their opposition to the war in Vietnam.

Some of the points of my good friends, CONYERS, MIKVA, and RYAN, are well taken, and I look forward to supporting their amendments. But whether or not these amendments are successful, I shall vote for the bill. The astronomical rise in the crime rate demands it.

Mr. RUTH. Mr. Chairman, I had an understanding with the people of North Carolina's Eighth Congressional District 2 years ago that this session of Congress would do something about the rising crime rate, and pay more attention to the rights of the law-abiding citizens than the rights of the lawbreakers.

With the anticrime bill before us today, and with the other crime legislation we have passed this session, I have kept a promise made with my constituents.

With the passage in the House today of the Organized Crime Control Act of 1970, we have concluded a series of anticrime measures that will give some comfort to the law-abiding citizens of our country.

I would be ignoring a major influence on the passage of these anticrime bills if I failed to pay compliments to the people of America, and to the President, who have insisted that the time has come for strong crime bills from Congress.

The new legislation we have enacted into law will not bring an overnight end to criminal activities. It will slow it down, of course. But what the legislation does principally is assure our citizens and law enforcement officers that we Members of Congress are willing to stand in front of the fight against crime.

We were all too tolerant about the permissiveness of the 1960's and we were witnesses to a dangerous erosion in our society. We cannot afford that tolerance again in 1970's.

We do not need reminders about the alarming crime statistics of the Federal Bureau of Investigation, or the number of policemen killed in the line of duty, or of the bombings and demonstrations that are catcalls to decency and law and order.

But I would like to remind you of the millions of Americans who go right through life without breaking a single law. These Americans need special attention. Not the man who breaks the laws of this country time and time again.

We have seen more concern about the rights of that man recently than the rights of our society itself.

The so-called war against crime is older than any of us here. But the attack on crime by Congress is only now coming of age.

We have seen the passage of amendments to the Omnibus Safe Streets and Crime Control Act that gives added financial support to the local law enforcement agencies under the popular Law Enforcement Assistance Administration. We have passed the Comprehensive Drug Abuse Prevention and Control Act of 1970, finally recognizing that the traffic in narcotics and the abuse of drugs has become a national problem of major proportion. We have acted to control obscene advertising in the mails for the protection of our children.

And now, the big one—the Organized Crime Control Act of 1970.

The best that we can do from here on, is to stand firmly behind our commitment to law and order in America.

Mr. PATMAN. Mr. Chairman, last Friday evening, October 2, the popular television interviewer and host, Mr. David Frost, had as his guest Mr. Edward Bennett Williams, known here and abroad as one of America's most competent and distinguished attorneys at law. What Mr. Williams had to say about the truly terrible state of affairs in our criminal courts should be heeded by every Member of this House. It has now come to the point in this great land of freedom and opportunity that the criminal is the one who is most free, and that he is given opportunity after opportunity to prey upon the law-abiding citizen, while our big cities are in a state of seige, and decent men and women are denied the freedom of their streets, despoiled of property, outrage in their persons, and deprived of life itself. Edward Bennett Williams speaks with tremendous authority, he knows the law, the procedures, and the sordid facts—I am impressed and persuaded by his knowledge, his logic, his forensic genius, and most of all by the deep moral sincerity which is so obviously his basic strength.

Although serious and shocking, this David Frost show was also an example of truth in television at its dramatic best. I am convinced that the Congress must do everything within its power to

strengthen the forces of law and order, as significant parts of the following transcript make abundantly clear:

AN INTERVIEW WITH EDWARD BENNETT WILLIAMS

DAVID FROST. Right now it's a great pleasure to welcome someone who's been described really as the dean of the American criminal bar. He's been described as the defender for the unpopular. People have said that a lucky defendant is a man who's able to have Edward Bennett Williams as his lawyer. He's also the president of the Washington Redskins as well. Would you welcome Edward Bennett Williams.

Welcome. It's a great joy to have you here, Ed.

EDWARD BENNETT WILLIAMS. It's nice to be here.

FROST. It really is. What did you think, in that incredibly distinguished career of yours, what's the most challenging case that you've been called upon to act in?

WILLIAMS. Oh, it's hard to say, David. I think perhaps though the wartime slaying of Major Houlihan behind enemy lines in north Italy at a time when there was a question as to whether northern Italy was under Nazi dominion or Mussolini dominion or the Badoglio government dominion. And Major Houlihan, who was an OSS agent, was slain mysteriously up there, and years later two American soldiers were charged with killing him, their superior officer. They were, of course, on an espionage mission, and I tried that case twelve years after the fact. It was then under the guise of a perjury case, because one of the men was charged with perjury for denying that he'd slain Major Houlihan, and I found that case intriguing because it was a real whodunit. I went over there twelve years after the fact and tried to reconstruct the crime and found all kinds of interesting things. It also was fascinating because there was a major Constitutional issue involved, namely, the right of the Congress to investigate a crime, whether or not the Congress had any business engaging itself in a criminal investigation or whether or not it should confine itself strictly to the legislative function of getting information for the purposes of enacting laws. I found this a most challenging case, and I would say that I'd have to single that out.

FROST. What was the eventual outcome?

WILLIAMS. The eventual outcome was that the defendant was acquitted, but the significant thing about the case was that we established a very important principle. The important principle was that Congressional committees should confine themselves to conducting inquiries to get information designed to help them to legislate. And they should not act as courts. They should not act as tribunals in which to try people to determine guilt or innocence. So at that time, which was fifteen years ago, that was a very, very important principle in the law.

FROST. This title, Ed, of defender to the unpopular, from which case do you think that springs? Who was the most unpopular person you had to defend?

WILLIAMS. I hate to say that about any of my former clients.

FROST. Who was there that you defended who was slightly unpopular?

WILLIAMS. Well, let's say that there were a number of people who were tarred with public obloquy . . .

FROST. That's a better way of putting it.

WILLIAMS. . . . against whom public opinion had been marshalled. I would say that maybe Frank Costello, whom I defended in a deportation case, and I defended Senator McCarthy in the censure case at a time when he was not exactly popular. In fact, when I was asked to defend Mr. Costello, I was told by the lawyer who had suggested to him that I represent him that he was at first most reluctant, because he said, "Isn't he the lawyer who represented McCarthy?"

FROST. Really. And Frank Costello didn't want to have anything to do with you.

WILLIAMS. But I think if you try criminal cases, and the cases are the subject of great popular interest, that it often seems as though you're defending unpopular causes. I simply follow the basic canon that governs my profession. I just don't turn anyone away who comes to me seeking help so long as they seek it within the limits of integrity regardless of how politically or socially obnoxious they may be, regardless of how hard the evidence may seem to be marshalled against them in the press, regardless of what public opinion may be. This is the obligation of a lawyer. I don't look for unpopular causes. I would love to represent you, David or any other popular figure. It's just that I haven't turned anyone away who has sought my services within the limits of integrity.

FROST. That's fascinating. Could you there's never been a case where someone had done something so repugnant that you felt you couldn't possibly defend them.

WILLIAMS. I have never turned anyone away because of the nature of the charge that has been brought against him or because he has been convicted in the court of public opinion or because public opinion has been marshalled against him. I think it's in the highest traditions of the bar. I think the most glorious traditions of the bar surround those lawyers who stood up and defended people against whom public opinion had been marshalled. The history of the American bar is replete with examples of lawyers who have done that. Judge Medina here in New York defended the Nazi saboteurs. Wendell Willkie, at a time when he still aspired to be President of the United States, defended Schneiderman, who was a Communist, at a time when feelings against Communism were running rampant in this country. There are, well, we could go on and on and on. The defense of Captain Preston by John Adams at a time when the feelings were running so wildly against the Tories in Boston. He stood there. And I think these are the most thrilling and wonderful stories about the American bar, lawyers who have risked disfavor and risked unpopularity themselves to stand in the court and defend the liberty of those who are unpopular in the minds of the people.

FROST. How often have you because you've been incredibly successful—how often have you been successful in getting somebody off a charge that privately you thought they were guilty of?

WILLIAMS. Oh, you know, this I have to take a point of departure here and say you're really asking me about whether or not I have ever gotten someone off who was guilty.

FROST. Right.

WILLIAMS. And I think in order to discuss that intelligently we have to define our terms. Guilt or guilty is a legal term. It is not a moral term. A person is guilty if he's convicted by a jury of his peers or if he goes into a court of law and admits his guilt. Under our system, the burden is upon the prosecution to prove a defendant's guilt beyond a reasonable doubt to a jury, and if he can not prove that, the prosecutor can not prove guilt beyond a reasonable doubt, then the person goes free, and I suppose that principle is based in compassion. It's that as a society we would rather have a guilty man go free than an innocent man be imprisoned. And so we tip the scales in that direction. Now, I say that there have been many cases, of course, when people have walked out without being convicted, who may have had some moral culpability. But I have always had the consolation of believing that they had been left to the majestic vengeance of God.

FROST. And there have been occasions when there have been people in that situation. I absolutely accept the definition of "guilty" of course, but I mean, then, there have been cases where people have been . . .

WILLIAMS. Oh, sure. There are cases, also, David . . .

FROST. . . . probably did it, but you got them off.

WILLIAMS. There are cases where the system of justice miscarries. Justice is a fallible, human system, just as all science is fallible and human. And we have errors in all the professions. And our courts do not work perfectly. All guilty men are not convicted. Nor are all innocent men acquitted. Fortunately for our system, I think the incidence of innocent men being convicted is much lower than guilty men going free.

FROST. Right. There's that miscarriage less than the other one.

WILLIAMS. Yes.

FROST. No, I was interested because I mean everybody deserves representation in a court, and that's very valuably what you're saying. And everybody, obviously, however definite the evidence appears, deserves the best advocacy possible. I was really interested because I don't finally know what is the rationale in a case presumably if a guy says—well, there's two situations. A guy who it looks as though he did some crime. Now, he could say to you, "I did not do it." And you could be pretty certain he did, but he has the right to a fair trial. Or he could say to you, and I imagine this second one you rule out or not, if he says to you, "Well, I did do it, but I want to plead not guilty." Now, is that okay?

WILLIAMS. Yes, it's okay, and let me explain to you why. He—every citizen who is accused of crime in our system has the right to a trial. And under the rules, he has a right to have his guilt established beyond a reasonable doubt by the prosecutor to the satisfaction of the jury. If that can't be done, then he's entitled to go free, you see. It's entirely proper, it's entirely ethical to test the witnesses' testimony in the crucible of cross-examination. If it doesn't pass muster, then perhaps the jury won't believe it. That does not mean, however, David, that a lawyer is justified in suborning prejury. He may not allow the defendant to take the witness stand and lie. He may not call witnesses whom he believes or knows are committing perjury. He may not use the weapons of fraud or chicanery to secure an acquittal. But it is perfectly proper to force the Crown in your country or the federal government or the state in this country to prove guilt beyond a reasonable doubt. That's the way the system works, and it's the way the system has always worked. By the way, I don't think the system is working very well at this point.

FROST. In what way don't you think it's working well?

WILLIAMS. Well, I think, David, and I have said many times in the past couple of years that the criminal justice system in America, in urban America is in a shambles. I believe that the whole criminal justice system in urban America is close, alarmingly close, to a breakdown. We know that crime in our big cities is spiralling. It's spiralling out of control. We talk about children being out of control. In America we have some cities that are out of control. Now, when I talk about crime, I'm talking about a broad, generic subject, so let me refine it. I'm talking now about the kind of crime about which our country is deeply concerned, about which the citizens are alarmed, the kind of crime that is directed against private property rights, often attendant with violence. It is taking place in urban America at an all-time high. I'm talking about robberies and burglaries and larcenies and yokings and muggings and thefts which are being committed at a record-breaking pace in the inner cities

of our thirty or forty large metropolitan cities. Now, these crimes, the record shows us, are being committed 75 percent by youths under 22 years of age. And 75 percent of them are being committed in the big cities. I suppose the sociologists would conclude from that that there's a relationship between the increasing urbanization of our population and the increasing restlessness of our kids.

Now why are these crimes taking place? What's the answer? What can we do about it? Well, we hear some people say, well, it's the result of the "turn-'em-loose" decisions of the courts. It's the result of liberal procedures. It's the result of decisions by the Supreme Court in recent years—Miranda, Escobedo, Mallory, Mapp—you know the names of the cases. Well, this is hokum. And it's demonstrable hokum. I can take you tonight into the precinct stations of New York or Washington, my home city, or Los Angeles, and we can sit there all night, we can sit there for a month, we can sit there for years, and we won't find one young hoodlum who's brought in off the streets by a police officer after committing his offense who ever heard of Miranda, Mapp, Escobedo, or Mallory or gave—or who gave one fleeting moment of thought to his Constitutional rights or his Constitutional liberties or to criminal procedures before he went out in the street to do his mischief.

They go out on one basic premise, that they aren't going to get caught. And if by some wild chance they are caught, their downside position is that they know they can tinker with the archaic American criminal justice system for two years before the day of reckoning comes and punishment is visited upon them. And that, David, is no deterrent to someone who is set on committing a crime.

FROST. We better take a break there, and we'll come back and there is one last thing there I must ask you, Ed, following on what we were saying earlier on. How many times, then, given your great advocacy, have you seen a man cleared of a crime and you thought to yourself as he left the court, "He may have to reckon with the majestic vengeance of God for that crime"?

WILLIAMS. I have seen that happen, David. I couldn't—I can't canvass back over 25 years rapidly enough to give you a number on it, but I certainly have seen that happen.

FROST. In that situation your feelings must be a mixture of, on the one hand, this is a demonstration of the rights of the citizen in a court with a curious feeling that this is not perfect justice. Is it a funny mixture, when you think of someone walking out who may have in fact done it. Or do you just feel, well, the case wasn't established in the court; it's fair. Or do you—I mean, I imagine you must, because you're so bright, have mixed emotions . . .

WILLIAMS. I have of course professional feelings about it. I also have human feelings about it. And I sometimes experience the emotion that you're obviously articulating here. I'm very worried about the whole system, for reasons that I hope we can get into as we go along, and I think it needs a major revolution.

FROST. These are fascinating issues. We'll be right back with Ed Bennett Williams.

FROST. Welcome back. Talking with the dean of the American criminal bar, Edward Bennett Williams. Ed, there are so many different issues to get into. One of the many areas that people are fascinated by are the various crafts and techniques that you employ in a courtroom. I mean, how many things are there, different techniques, that you use in a courtroom in order to establish the truth of the thing?

WILLIAMS. Well, I think that the trial of a major criminal case is really one of the highest forms of creative art. I really do. I had a long debate one time, David, with a great maker of motion pictures, Robert Rossen. Robert Rossen wrote, directed, and produced a very great motion picture that won all kinds of Academy Awards.

FROST. "The Hustler"?

WILLIAMS. The one I'm thinking of—he did make "The Hustler". The one I'm thinking of is "All the King's Men", which was a fictionalized version of Huey Long's life from Robert Penn Warren's book. And he was arguing that this was the highest form of creativity because he had to write the script, and he had to direct the actors, and he had to produce the picture. And I said, "There's one form of creative art, Bob, that't higher and that's the trial of a major criminal case." Because the trial lawyer has to do all of those things. But he must do it within the channels of the truth. He can't fantasize; he can't fictionalize. He has no backdrops. He has no retakes. He has no lighting. And he must create an impression that satisfies twelve jurors. He must work with the witnesses and you know, that has kind of an ugly connotation, but let me explain to you what I mean.

The most important actor in a criminal trial is not the defense lawyer. It's the defendant himself. And the impression that he makes on the jury is going to be the most significant thing that takes place in the criminal trial. And so he must be taught literally how to testify—not what to say.

Now let me give you some instances. Supposing it became germane as to where the defendant was on the night of June 1, 1967. And he's on the witness stand and the prosecutor pops the question at him on cross, "Where were you on the night of June 1, 1967?" His eyes go back and forth, and he drops his head. He says, "I don't know." Well, at best, that has created a neutral impression, and perhaps a negative impression with the jurors.

But if he had said in response to that question, to you the prosecutor, "Mr. Frost, I thought you were going to ask me that question, sir, and I've racked my recollection so that I would be able to answer it and help the court and jury and for the life of me I can't recall where I was on that night. And I have resorted to all kinds of memory refreshers, but I don't honestly know where I was that night. I really can't help you." Now, he's given the same answer, has he not?"

FROST. Right.

WILLIAMS. And he has created a positive impression on the one hand. On the other hand, at best you'll agree it was neutral and perhaps negative. Now—so I say that the trial of a criminal case calls upon many imaginative, innovative things on the part of a trial lawyer. And always he is working within the limits of the truth. Whereas the writer of a stage play or the director and writer of a motion picture can let his imagination be as prolific as possible, and he can have free rein. So I say finally, in response to your question—I'm sorry I took so long to answer—I say that it is a very, very highly creative art form.

FROST. And in this highly creative art form you mentioned you were looking for imaginative and innovative things to do. What sort of imaginative things do you have to do in doing a court case? I mean, if you were looking back at your various cross-examinations, what one would you want to be put in a lead cannister and buried for fifty years because you did something very creative or imaginative? What cross-examination do you look back on?

WILLIAMS. Well, I think that sometimes the greatest cross-examinations are absolutely so subtle that they are lost not only on all the spectators in the courtroom. They are lost sometimes on the judge and the jury. And at the end of the trial, when the trial lawyer picks up the pieces and juxtaposes one set of facts against the other and tells the jury what he had done, sometimes the effect is tremendous. I remember the case I tried years and years ago in which the defendant, whom I shan't name here, was indicted for perjury. He had gone before a grand jury, and he had denied that he had given some gratuities to a government official. It was not money, incidentally. It was some—I forgot what it was. It was something of value. He said he hadn't given it when in fact he had.

And his defense was that, yes, in fact he did do it, but he had completely forgotten about it at the time that he was asked about it and that when his memory was refreshed he had sought to go back and change his testimony, but that the grand jury was no longer in session During the trial, the government called a number of prosecutors who were in the grand jury room at the time to testify. They called—let's fictionalize the names—Mr. Smith, Mr. Jones, Mr. Brown, Mr. Jackson, and Mr. Cohen. And Mr. Smith got on the stand and he said, "Yes, the defendant testified so," and I said, "Mr. Smith, just as sort of a throwaway question, who was in the grand jury room with you at the time that this man testified?" He said, "Oh well, Cohen was there and Brown was there and Jackson was there." And the next witness came. And Mr. Jackson took the stand. And I said to Mr. Jackson, "Who was in the grand jury room at the time the witness gave the testimony?" He said, "Oh, Mr. Smith was there and Mr. Brown was there and Mr. Jones was there."

Well, five lawyers took the stand—this was two years after the grand jury had sat—and no one of the five had remembered the names of the five colleagues who were present before the grand jury. Well, this was lost. It was lost in the morass of all the really pertinent questions that were asked, and no one really saw what had taken place really until at the end of the trial I was able to stand up in front of the jury and say, "Ladies and gentlemen of the jury, they're asking you to send this defendant to the penitentiary for perjury for a failure of recollection, and every single one of the prosecutors has failed to remember who his colleagues were in front of this grand jury." Well, I used that to illustrate a cross-examination that was totally un-spectacular, totally lost at the time that it was being conducted, insofar as the jury was concerned, but at the end, when all the pieces were picked up, a very powerful argument could be made.

FROST. And had you in fact—did you hit on that course of action accidentally, after asking the first one, or before you asked the very first one?

WILLIAMS. I didn't know what the answers were going to be. When I saw that I was really mining gold here becaues none of the prosecutors could remember, I was able to demonstrate in very dramatic form the failure of the human memory with respect to events two years ago.

FROST. And the case—you were successful in that case?

WILLIAMS. Yes. In that case. You know, let me say one thing on that subject. I've won cases and I've lost cases, David. And sometimes I think the television medium gives a very distorted picture of the American trial lawyer. I think that too often he equates the great trial lawyer with Perry Mason, who never loses his case. Well, the fact of the matter is that you show me a lawyer who's never lost a case, and I'll show you a lawyer who's tried only two cases. And I think if you took a hundred cases, and fifty cases should be won on the merits and fifty lost on the merits and you gave those cases to the greatest trial lawyer who ever lived, he might win sixty and lose forty. And if you gave the same cases to the most incompetent trial lawyer in the city, he'd win forty and lose sixty. And so, I'm saying that the margin for effectiveness is very circumscribed.

FROST. So what you're saying is, if you're one of those twenty, get a good lawyer.

WILLIAMS. I'm saying exactly that.

FROST. We'll be right back.

FROST. Welcome back. Talking with defender of the unpopular, Edward Bennett Williams. You were talking about the breakdown of law earlier on. Is there any way of dramatically arresting that?

WILLIAMS. I think so. I think the time has come for us to do something very dramatic about it. Last year, David, there were two million burglaries in this country, and most of those took place in the cities. Only eighteen percent of those were cleared by the metropolitan police forces. By that I mean that in only eighteen percent of those cases did the police end up thinking they knew who committed the burglary. There were 1,500,000 larcenies or thefts of property in excess of fifty dollars. In only eighteen percent of those cases did the police end up thinking they knew who committed the larceny. There were 270,000 robberies—now, that means taking somebody's money at the point of a gun, with a weapon, by intimidating him or putting him in fear, coercing him. Only 27 percent of those crimes were cleared by the police. There were 870,000 auto thefts, and only eighteen percent were cleared. Now this means that when a thief goes out to commit his crime in the cities of America, the chances are five to one he's not going to be caught. Five to one!

Now, I'm only talking to you about reported crimes, crimes which were reported to the police. There are thousands and thousands that aren't reported. Now, I say those odds have to be narrowed. I think that the time has come when we must escalate the quantity and the quality of our urban police forces dramatically. Now, the cities are broke. They can't afford it. They don't have the money to pour this money into their forces. So it means that we have to come to terms as a nation with the necessity to subsidize the urban police forces of America, with large money subsidies, maybe in the form of matching grants. We have to do something else. We have to have a West Point for law enforcement officers, just as we have a military academy and a naval academy and an Air Force academy. And we have to offer young, bright boys of college age and girls the opportunity to go into law enforcement at a commissioned level. We have to have lateral infusion in our police forces. We have to have the concept of officers candidate schools so that we aren't asking young college graduates who are qualified to go pound a beat for three or four years before they can become even a sergeant. We have to do something else. We have to restore the police officer in this country to the position of dignity and respect that he had fifty or a hundred years ago.

I say we expect a great deal of a policeman in this country. We expect him to be a professional. We expect him to be something of a Constitutional lawyer. We expect him to be an expert in first aid. We expect him to be a family counselor, a sociologist. We expect him to have the patience of Job, the wisdom of Solomon. We expect him to have the agility of a professional football player and too often we give him 150 dollars a week and a gun. I say the time has come to change this. If we're going to curb and deter urban crime, we need more and better police forces. But the sad thing is that when the policeman apprehends one of these criminals that he goes in to the archaic, anachronistic criminal justice system of America which is now becoming a sham in the big cities. I say it's like a scarcrow put out in a field to scare away the birds of lawlessness but tattered by neglect. It has the crows sitting out on its arms cawing their defiance because it isn't working.

Any system that takes two years to deal with a street crime isn't working. It just isn't working, and we've got to do some very innovative, imaginative things with our court system, tremendously innovative things. There's nothing more difficult to explain to an intelligent layman in this country than why it is that someone who has been convicted of robbery by a jury can still play around with the appeals courts for two years before punishment is inflicted. They don't understand that. In London, in Old Bailey, if there were a jury trial concluded this afternoon and the defendant were found guilty, he would be in the British Court of Criminal Appeal in three weeks, and the decision would come down the same day. I think the time has come for us to take a careful look at the British criminal justice system and adapt for our system what we can that will make our system responsive to the needs of society.

FROST. But why is it that much quicker?

WILLIAMS Well, I think there are a number of things that can be done. Why is it. . . .

FROST. Why is it quicker?

WILLIAMS. I'll tell you what happens in our system. Let's pick up aftr the trial where one of the worst slowdowns take place. Man goes to trial. He's tried for robbery. He robs you out here on the streets of Manhattan tonight. He goes to trial. He's convicted. Now he appeals. Today everybody has the right to appeal for nothing, and I think no one should be deprived of his Constitutional rights because of economic conditions. Everybody should have the right to exercise his Constitutional rights. But there are appeals in all cases. Now the first thing that happens is that the court reporter who set there and took down the testimony of the witnesses has to prepare the record. Now the court reporters work all day, and they have to prepare the records at night, and they get behind. So too often it takes there or four months to get tha record up to the appellate court. Then the lawyers write briefs. Now the briefs are filed and another few months goes by, and then an oral argument takes place. And after the oral argument takes place, in front of three judges, one of them is assigned to write an opinion, and too often four, five, and six months go by before we get an opinion. They feel constrained to write an essay. I say that this is not responsive to the needs of our society at the moment.

We have a fire in our society, and we have to put it out. I say let's adapt the modern techniques of the twentieth century. Let's videotape our trials. I can go into the dressing room and see what happened after watching the football game because of videotape. Now I say the time has come to videotape these trials and index those videotapes so that the appeals court can see what happened at the trial level. I say let's eliminate briefs in the kind of crimes about which we're speaking—robbery, burglary, and larceny. Everything that's ever been written on these subjects has been written.

These subjects are hundreds and hundreds of years old. Let's go up to the appeals court, have an oral argument. Let the lawyer talk so long as he is relevant, and then let's have a decision that day. And I say we don't need three judges to hear these appeals. I say they can be heard by one judge. And we can get the system moving. But at the present moment, we worry about increasing episodes of contempt of court. We worry when political defendants disrupt trials and show contumacious conduct toward our courts. I think our real worry in America should be whether or not our court system is not forfeiting its respect by the inordinate delays in dealing with the social problems of the big cities.

FROST. We're going to take a break there. We'll be right back with more Ed Bennett Williams.

FROST. Welcome back. And now we're back, talking with Ed Bennett Williams. I was hearing just now—what's the Holy Name Society story?

WILLIAMS. You heard that story.

FROST. I haven't heard the story. Gene just told me it was funny.

WILLIAMS. Well, it's the story of—it happened years ago. I was invited up to speak at the annual dinner of the Holy Name Society in New England and I accepted and went up there and was ushered into the main ballroom of the Sheraton-Plaza Hotel in Boston. And the presiding officer of the evening stood up to introduce me, and he said, "We're very honored today to have a lawyer here who has represented Frank Costello, Elmer "Trigger" Burke, Tex O'Keefe of Brinks robbery notoriety, and Vito Genovese." Well, the fact is I had not represented all those people, but that was the way he introduced me. So during the course of the evening, I turned to him and I asked him why he'd singled out these particular people as a means of introducing me, and he said, "Oh, I'm terribly sorry if I said anything inappropriate or offensive, but these were the only ones I could find who were members of the Holy Name Society."

FROST. Weren't you once invited to Alcatraz?

WILLIAMS. A long time ago. I spoke out there as part of the educational program for the inmates. I had a very warm and gracious letter from the then warden. He said that while his budgetary allowances would not permit him to pay my expenses or give me an honorarium that he could compensate for that by guaranteeing me an excellent turnout. And he did. I went out there, and the presiding officer of the evening was an inmate, very eloquent inmate, and he was waxing on effusively as to how I was held in great personal esteem and great affection by the inmates, and when it seemed as though he was caught in a flight of rhetoric, he suddenly put his hand on my shoulder and he said, "Oh, Mr. Williams, I've talked too long. Suffice it to say we fellows out here on the rock regard you as one of us."

I made a terrible faux pas, I was told later, because I opened my talk saying, "It's just wonderful to have so many of you here this afternoon." And that was greeted with a rather deadly silence.

FROST. Have you been involved in many cases that have been involved with complex issues of espionage? Have you been involved in many of those?

WILLIAMS. I have tried espionage cases, yes. Yes, I have.

FROST. Which ones?

WILLIAMS. Well, in 1960 I had a very strange call from the then Ambassador of the Soviet Union, who asked me if I would defend a man named Igor Malik, who had been accused of espionage. Igor Malik was a second secretary of the Soviet Foreign Ministry attached to the United Nations. And it was right after Francis Gary Power had made his overflight and had been apprehended that we brought this indictment against Igor Malik. And I must say that really tested my devotion to the Constitution, because I had been preaching around to the law schools of the country that everybody had the right to counsel, and it was a lawyer's responsibility to provide counsel as long as it was sought within the limits of honesty and that nobody should ever turn a case down because of personal considerations or because some personal disfavor might come to him. And to represent a Soviet spy at the insistence of the Ambassador of the Soviet Union was not designed to make me popular at the country club, as you can see.

I obviously could not turn it down for that reason, and I did not, and I accepted the representation after getting a commitment from the Ambassador at that time that I had total control over the case and that I

would have total candor from my client, which is something I demand in every case. Total control in that case meant something very interesting, and that's why I was so excited and captivated by the case because as you probably know, diplomats and attaches to embassies and employees of the United Nations have diplomatic immunity. They may not be prosecuted in this country for any crime. Now, the Soviet Union was contending that as a result of the treaty of 1945 which created the United Nations that Igor Malik was immune from prosecution.

So I asked for the right to control that issue. There was a lot of foot-dragging on that. They didn't want to give me control over that issue, and it took some three or four weeks before they finally cleared it. And finally they said, yes, you may control the issue of this man's immunity. This was in January of 1960, just before—of '61, just before President John Kennedy was inaugurated. Robert Kennedy had been named Attorney General. It was obviously useless for me to go to see the sitting Attorney General because he was going out of office. So I went to see Robert Kennedy. And I said to him. "Bob, we have a chance to do something that no two lawyers in history have ever had a chance to do. We can do something so dramatic, we can make such a tremendous contribution to world peace that we just have to do this. I will agree on behalf of my client to put the issue of diplomatic immunity into the World Court, into the International Court of Justice in Geneva if you will agree on behalf of the Department of Justice to let that question be decided by the World Court."

Now, the reason for that was—that I wanted to do that was that this would be the first time in which the Soviet Union had ever agreed—first occasion on which they had agreed to jurisdiction of the International Court of Justice. It would have put them in court. And I saw unlimited horizons if we could get the Soviet Union before the World Court. I could see the possibility of all kinds of collective disputes, disputes between nations, the Soviet bloc and the Western bloc, being adjudicated by law instead of by force. I saw possibilities of substituting the force of law for the law of force, and it really captivated me, and it captivated Robert Kennedy. And we had this great, great chance to do this.

And he said that he would take it up. He had to of course take it up with the Secretary of State. He had to take it up with the President. And that he would get back to me. I waited for several weeks. He called me one day, and I went over to the Department of Justice, and with great sadness and obvious disappointment but without revealing the reason, he said, "I can't do it. I just can't do it. We just have to go ahead and try this case." And I said, "But we're missing something so fantastic. What a step toward the rule of law among nations we can make if we can put them into court."

Well, he couldn't tell me why, but in any event we did not do it because the American government turned it down. I want to state to you the Soviets were very unhappy about the fact that I had made this offer, very unhappy about it, but I told them that if I didn't control the case I would withdraw from it. They didn't want me to withdraw from it. As we prepared for trial, suddenly I had a call from Robert Kennedy one day. I was in New York. He called me, and he said, "The case is over. We're returning him to the Soviet Union." And at the time, the RB-47 pilots were released. There was a swap. But it was a case which has filled me with regret ever since because I thought here was a chance to do something.

I think the greatest thing a lawyer can do is make a contribution towards peace. You know, in the history of mankind we've found only two ways to settle disputes between individuals—violence and the submission of the dispute to a third person for a decision that's binding. We have not learned this in international relations. We still are settling things by violence. And unfortunately for humanity, it's not going to be longer much possible—possible much longer to settle disputes by all-out violence because all-out violence will be annihilative. And I think what we've got to do is bring our moral systems, our social systems, our spiritual selves abreast of our scientific advances, and finally come to terms with the fact that there must be a court, a world court of justice to adjudicate disputes between nations.

FROST. We're going to take a break there, but in fact, that thing that you insisted on there, of full control over a case, that's one of the things you always—what do you insist on in a case?

WILLIAMS. You have to have control.

FROST. Full control.

WILLIAMS. Full control. And I would say it has to be, if you'll excuse the expression, dictatorial control. You have to make battlefield decisions in the courtroom. There isn't time for consultation. You can not confer. You can't try a case by committee. Therefore you have to have control, just the way a surgeon has to have control when he's doing an operation. He can't let you look in a mirror and say, "Doc, move the scalpel a little over this way because I don't like the way you're doing it." So I have to exact that commitment from the client at the outset, and sometimes they are unhappy with it.

FROST. Didn't you have a dispute with Frank Costello once over something like that, to do with his clothing?

WILLIAMS. Yes. Morris Ernst, who's an old friend of mine, came to see me one time and asked me if I would represent Frank Costello in a deportation case. And this was years and years ago. And I said, "Well, assuming that we can agree on the basic conditions that I must exact from him, I'm willing to do it." So I came to New York, and he was at that time in jail. He was at West Street. There is a federal detention headquarters over here on West Street. And we went into a little room, and I said to him, "Look, first of all I have to have time to prepare this case, and it's coming on very quickly, so there must be an adjournment, there must be time secured to get me to prepare. Secondly, I have to have from you absolute candor. I've got to have a truthful answer to every question I propound to you. Otherwise, I'm not going to stay in.

Thirdly, I have to have absolute and total control over this. I can't function if I have to consult with other lawyers or I have to consult with you about (tactics). You have to entrust this case to me absolutely. If you can't do that, we should part company right now and not have any disappointments." And he said, "All right, I guess I'll go along with that." And I said, "Well, all right, now, we're going into court to get some more time." He'd been sick by the way, quite ill. And I said, "I understand that you wear very expensive suits. There's no need for you to wear a very expensive suit in court when you go with me. Just wear what you have on." He had a—he looked quite badly. He'd been there, and he had these blue denims on. He kind of nodded quizzically. And we continued talking. Five or six minutes later I got up. I said, "Well, okay, I'm going to go.

And he said, "Just a minute." He said, "Just one thing, Mr. Williams." I said, "Yes?" He said, "It's about that suit." I said, "What about the suit?" He said, "I'm sorry, but I'd rather blow the case than wear this suit." He didn't want to come in in the garb he was wearing at the time.

FROST. And you let him have that point, did you?

WILLIAMS. Yeah.

FROST. We'll take a break. We'll be back with more Ed Bennett Williams.

FROST. Welcome back, talking with Ed Bennett Williams. We haven't really mentioned the Washington Redskins as much as we might. That must be a terrific relaxation for you. Is it?

WILLIAMS. Actually it isn't a relaxation. It really isn't.

FROST. Isn't it?

WILLIAMS. No. I really haven't enjoyed watching football since I became associated with the Redskins. I really don't enjoy watching the game. I really don't. I'm so uptight watching those games on Sunday that it's a form of masochism for me to go . . .

FROST. Really?

WILLIAMS. Yes.

FROST. What are your greatest memories or moments of Vince Lombardi?

WILLIAMS. Well, I was very close to Vince Lombardi. I loved him very much as a friend. I'd say that to call Vince Lombardi just a fine coach in the National Football League would be like saying that the Louvre was a well-constructed building in Paris. He was much more than just a fine football coach. He was a very great man. More than any man I have ever known in my life, he was committed to excel. He was dedicated to excel in everything he did. Under all circumstances, at all tmes, in all places. He burned to be the very best that he could be. I think that it was a creed with him. It was to him the highest form of prayer to tax his capacity to its ultimate, and I felt about him that at a time in our country when duty and honor, patriotism, respect for authority, self-discipline, obedience, devotion to God are old-fashioned, kind of outmoded ideas in the minds of many, he proved by his life that they're the real hallmarks of manhood.

FROST. If you had to pick one incident that was pure Lombardi as you'd like to remember him, what would you pick?

WILLIAMS. It's so hard to think. So many things. I remember so well a conversation that I had with him which made a tremendous impression on me when I first got to know him back in—I think it was in 1961. He was then the coach of the Green Bay Packers. And he had just reached the pinnacle of success. He had won the world championship. He'd beaten the New York Giants in the National Football League championship 37 to nothing out in Green Bay. And he and I were down in Miami, and we were sitting talking very, very late one night much as you and I are talking. And we were talking about the pressures, the terrible pressures of staying on top, how much harder it is to stay there than it is to get there. And he said something to me that I never forgot. He said, "Success is like a narcotic. One becomes addicted to it, but it has a terrible side to it because it saps the elation of victory and deepens the despair of defeat." And I think, if you think about success in almost any milieu, in almost any frame of reference to which you address yourself, you'll find that that's the betrayal of success, that it never brings the kind of satisfaction that you hope for when you're trying to get there.

FROST. That's a great quote. Do you find that's true in your own life?

WILLIAMS. Yes. I find it very true. That's why it made such a tremendous impression on me when he said it. And Vince Lombardi, you know, would have been a great man whatever he did because he put a kind of pressure on himself that is just fantastic. I believe with a great passion that the really great and exciting people of this world are the people who are committed to excellence, who care, who are dedicated to do the best that they can do with whatever talents God gave them. And I don't care whether they're bartenders or bootblacks or doctors or law-

yers or football players or politicians or poets or television stars, I think these are the exciting people of the world, worth knowing and loving and revering, and I think these are the people who made our country great, and I find that this is a quality which is ebbing away and slipping away in our country, and I think that this is one of the major problems of our society at the moment, that there just aren't enough people who care, who have that kind of feeling about what they do, who care enough to try to be the best that they can be.

I think John Gardner said it best in his book on excellence. He said, if I remember correctly, he said that an excellent plumber is infinitely more admirable than an incompetent philosopher. A society that scorns excellence in plumbing because it's a lowly activity and tolerates shoddiness in philosophy because it's an exalted activity will have neither good plumbing nor good philosophy.

FROST. Absolutely.

WILLIAMS. He ended that quote by saying neither its pipes nor its theories will hold water.

FROST. Great. We'll be right back.

FROST. Welcome back. Talking with Edward Bennett Williams. Tell me. We've been talking about some very dramatic cases and so on. How often do light moments happen in a courtroom? Have you moved an audience to laughter or been moved to laughter in the courtroom much yourself? Or is it always serious?

WILLIAMS. Well, it's obviously not always serious. There are some times when there are really merciful things that happen. You know, thank goodness that the drama of the courtroom is broken at times by laughter because otherwise it would be a pretty somber kind of existence. But oftentimes the jury gets a good laugh, and the court gets a good laugh.

FROST. And that saves everybody's face a bit.

WILLIAMS. It saves everybody, yeah.

FROST. What have you ever in a summation or some summing up at the end—what's the longest summing up you've ever given? Eight hours once?

WILLIAMS. I did all day once. I tried the income tax evasion case here in New York for Adam Clayton Powell. Oh, that was years ago. And I talked to the jury all day. I think it was probably too long, but (laughter) I talked all day and the prosecutor talked all the next day. There was quite a lot to say.

FROST. Did you have notes or did you just ad lib for nine hours?

WILLIAMS. I knew exactly what I was going to say. I didn't ad lib, but I don't read speeches.

FROST. Have you ever moved a court—I mean not every member—have you ever moved a courtroom to tears?

WILLIAMS. Oh, I've seen jurors cry, yes.

FROST. Have you? When?

WILLLIAMS. Oh, I've seen jurors cry in a number of cases. You know, it's a very emotional and traumatic experience to sit in judgment on someone when it's within your power to affect his life by possibly tossing him into jail. It's the most godlike thing that a man is called upon to do, to judge another human being. And sometimes people performing that function get emotional and they cry. And I've seen jurors cry, yes. They get emotional and they weep, and I think it's good to weep sometimes, and to laugh sometimes, to have the whole gamut of emotions. I think it shows you're well-balanced.

FROST. Was this in response to a speech by the defense, or was it after a verdict had been announced?

WILLIAMS. No, I've seen jurors cry during argument, my argument. You know, I don't try to make them cry. I try to win the case, but sometimes they cry.

FROST. Can you remember any cases, specific instances?

WILLIAMS. I remember cases in which they cried, but it was generally because they were distressed over the misfortune that had fallen to the defendant as the result of the criminal proceedings. Oftentimes, you know, when a defendant is tried for a crime, if he's a well-respected and esteemed member of the community, the mere fact that he's tried brings great hardship to himself, to his children, he sometimes suffers economic ruin. His children suffer grave embarrassment and sometimes grave harm. And the sadness of the whole proceedings sometimes elicits an emotion of sorrow from the people who sit in judgment.

FROST. What's the saddest case to you that you were ever involved in?

WILLIAMS. The saddest case. The saddest case. I really—you know, I always think that there is a certain amount of sadness when someone who has otherwise enjoyed an excellent reputation suddenly gets into difficulty with society and is charged as a criminal. I think there's great sadness. I'm talking about someone who has an otherwise unsullied reputation and is suddenly—is charged with a crime. I think they're always terribly sad. Sometimes it happens as a result of a momentary passion. There will be anger, flashing anger, and harm will be done. Sometimes between a husband and wife. That's what I deplore, David, guns in homes. I am so against having guns in homes because in 25 years—in 25 years of practicing law I have seen so many family quarrels that at most would have been angry words or a slap escalate to homicide because there was a gun handy after a lot of alcohol.

FROST. That's a most vital point, that really is. You've really seen that many times.

WILLIAMS. Yes! Instead of angry exchange and maybe the anger manifesting itself by an outburst of physical violence, in slaps or at most a punch, instead of that with a little alcohol it escalates into a tragedy. I think those are terribly sad cases, because someone has ruined his life probably because of an extra drink and a flashing temper. Those are terribly sad cases, and they're very difficult for judges to deal with when they impose sentence.

FROST. We've got to take a break. We'll be right back.

* * * * *

FROST. Welcome back. And that, unbelievably, and thanks to you, Ed, that's the end of ninety minutes. It's amazing. One last question I must ask you. That is, as the result of all these cases and all these crimes you've been in court while they've been discussed, have you ended up with a greater or lesser faith in human nature?

WILLIAMS. Far greater. I really have. I have really great and deep faith in the—in human nature, and I think that, David, we're in a period of great social revolution in our country, and I feel that there's a daunting challenge presented to the American people and that they're going to meet the challenge. Certainly a lot of our institutions need correcting, especially my institution, the criminal justice system, and I think we're going to make it.

FROST. Come and see us again, please, Ed. Thank you so much. Goodnight.

Mr. ANDERSON of California. Mr. Chairman, I rise in support of S. 30, the Organized Crime Control Act of 1970. The purpose of S. 30 is to seek the elimination of organized crime in the United States by: First, strengthening the legal tools in the evidence-gathering process; second, establishing new penal prohibitions; and, third, providing new remedies to deal with unlawful activities of those engaged in organized crime.

Mr. Chairman, this bill is only one facet in our fight to eliminate crime. Both Houses have passed the Comprehensive Drug Abuse Prevention and Control Act of 1970, a bill designed to eradicate the "pusher." Currently, heroin addicts alone account for $6 billion annually lost through larceny, burglary, and robbery. The drug abuse bill is designed to eliminate the "pusher" and get the addict off the streets.

Earlier this year, the Congress enacted the District of Columbia crime bill. The District of Columbia crime bill applies only to Washington, D.C., but may be used as a model for the States if it proves successful.

The House has passed legislation designed to put the smut dealers out of business. On April 28, the House passed H.R. 15693, which prohibits the use of interstate facilities, including the mails, for transportation of smut to minors. On August 3, the House passed H.R. 11032, which prohibits the use of interstate facilities, including the mails, for transportation of salacious advertising.

In order to aid local police departments by improving the technical aspects of law enforcement, the House passed H.R. 15947 on June 30, 1970. This measure authorizes the appropriation of $650 million for the Law Enforcement Assistance Administration which, in turn, makes grants to local police departments, research organizations, and state law enforcement agencies.

The bill before us today, S. 30, is aimed at ridding our society of the highly profitable business of organized crime. Organized crime has been bleeding this country for too long and it must be eliminated. The profits from organized crime conservatively estimated at $6 to $10 billion annually—are larger than the profits of most of our largest corporations—United States Steel, A.T. & T., General Electric, RCA, and so forth. The profits are made largely by gambling, loan-sharking, and trafficking in narcotics.

The Organized Crime Control Act is aimed at strengthening the tools to get at organized crime. Titles I through VII are designed to strengthen the evidence-gathering process and insuring that the evidence will then be available and admissible at trial. Title VIII would make large scale gambling a federal offense. Title IX is aimed at keeping organized crime out of legitimate business through the use of both criminal and civil penalties. Title X provides for 25-year sentences for certain categories of convicted special dangerous offenders, including those with proven organized crime connections.

In order to regulate and curtail explosives, Title XI was added by the House Judiciary Committee. This section assists the States in controlling the sale, transfer, and disposition of explosives within their borders, by requiring the licensing of manufacturers, importers and dealers of explosives. In addition, permits are to be required for all users who depend on interstate commerce to obtain explosives. The addition of this provision presents a new dimension of this legislation—a dimension designed to put the bomb thrower behind bars.

Mr. Chairman, crime challenges the

existence of this Nation—a challenge we must meet and overcome. I feel that S. 30 is an answer to the crime wave that has been sweeping the nation.

Thus, I rise in support of S. 30 and I urge my colleagues in the House of Representatives to join with me in support of this needed legislation.

Mr. MONAGAN. Mr. Chairman, I support the Organized Crime Control Act which we are discussing today.

This forms another link in the chain of legislation which we are forging to deal with the menace of crime in this country. We have already passed laws dealing with crime in the District of Columbia and in the country at large and it is appropriate that we should turn our attention to the threat posed by what has some to be known as organized crime.

In these days of business conglomerates and the ever greater growth of business and social units, it is only natural that crime should grow in size and in organizational complexity. Along with the technological advances that are used by modern business has come the translation of their use to the criminal side of the ledger.

In order to combat these highly organized and well-equipped forces, it is necessary that enforcement authorities be provided with tools which are fitted to deal with this modernized entity and these tools are provided in this legislation. The granting of general immunity, the penalties for false declarations, the modernization of rules relating to depositions and the sections dealing with syndicated gambling and racketeer-influenced organizations will all be helpful in providing greater power to prosecuting officials to deal with criminals in organized antisocial activities.

A final section deals with the regulation of explosives and takes a step forward in this delicate field by prohibiting their distribution to minors, drug addicts, mental defectives, fugitives from justice and charged or indicted criminals. These provisions should preserve the rights of those who legally use explosives but provide the beginning of a system of regulation for those who are not competent to use them without danger to society as a whole.

The American people are properly demanding an end to the rising tide of lawlessness in the country and they are right fully asking that their Government make them secure in their homes and neighborhoods. This law is one more step along the road to these vitally important objectives.

Mr. Chairman, I rise to express my support for this important measure before us today. the Organized Crime Control Act of 1970, as amended by the House Judiciary Committee.

We need to meet the challenge that organized crime presents this country. I believe that this measure, which embodies the best of the recommendations presented by the American Bar Association, the American Law Institute, and the President's Commission on Law Enforcement and Administration of Justice, incorporates the best available ideas for fighting the ever increasingly sophisticated criminal syndicates. While I do not view this legislation as the panacea to rid our Nation of organized crime, I do view it as a forward and necessary step toward that end. It is a step we must take. As Attorney General Mitchell noted in his statement to a Senate Judiciary Subcommittee, too few Americans appreciate the dimensions of the problem of organized crime; too few understand its impact—its sinister and corrosive effects upon society. However, its victims are everywhere—the housewife as she does her grocery shopping, the wage earner unaware of misuses of his pension funds, or the ghetto resident whom organized crime preys upon with numbers games and narcotics to aid him in trying to escape from his plight.

Truly, our law enforcement officials need new tools to fight crime. We cannot expect to treat an old problem with old methods and expect new results. The situation is so serious that in my judgment we have no choice but to adopt strong new rules. Although the provisions of this legislation are many and complicated, I do want to discuss three of the provisions which I consider especially important and particularly, title XII, an amendment which I introduced for the establishment of a National Commission on Individual Rights.

Title X of thsi legislation is designed to extend sentences of organized crime offenders by up to 25 years. I myself have long been of the opinion that current law is insufficient to provide appropriate sentences for well-known organized crime leaders. A Gallup poll of early last year substantiates that I am not alone in this belief. It revealed that 7 percent of those interviewed thought our courts did not deal harshly enough with criminals. Another study based on FBI sentencing data reveals that two-thirds of organized crime members included in the study and indicted by the Federal Government since 1960 have faced maximum jail terms of only 5 years or less and fewer than one-fourth have received the maximum jail terms, and the sentences of the remainder have averaged only 40 to 50 percent of the maximums. And no wonder as the President's Crime Commission reports organized crime injects over $2 billion annually to public officials to buy immunity from the law.

Title X will begin to correct this situation by utilizing a long proposed principal by the Department of Justice, the American Bar Association, and the President's Commission on Crime that there should be one standard of maximum sentences for ordinary offenders and another higher maximum sentence to be applied against the more dangerous repeat offenders. I support such a measure.

Title XI is a strong reaction by the Congress to deal with threats of disorder and social upheaval that now plagues our campuses and cities by radicals who would use explosives. Title XI extends Federal jurisdiction to bombings on campuses receiving Federal financial assistance, permits the use of wiretapping in such cases and the introduction of the FBI to assist State and local authorities in investigations.

The need for this legislation was never more vividly illustrated than by statistics released this past summer by the Department of Justice. During the 15-month period of January 1, 1969 to April 15, 1970, there were 4,330 bombings in the United States, 1,475 attempted bombings, and 35,129 bomb threats. Forty-three people were killed and 384 injured, many of them very seriously. Property damage during the period reached upwards to $21,800,000. Nevertheless only 36 percent of the bombings were solved, and 56 percent took place in connection with campus disturbances.

This title also establishes Federal controls over interstate and foreign commerce of explosive materials which, I believe, will be an important aid to the States in overseeing the flow of explosive materials within their jurisdictions. Under this provision manufacturers, importers, and dealers who trade in explosives must obtain a license. Furthermore, it prohibits the sale and distribution of explosives to persons under 21 years of age, drug addicts, the mentally impaired, and certain felons. Or in other words, it prevents the possession by those whom we would least want to possess explosive material.

In addition to these controls, the legislation effectively closes gaps in existing law by providing penalties against malicious damage or destruction by explosives of property of institutions and organizations now receiving Federal funds.

I believe it to be the responsibility of the Congress while adopting these new tools for law enforcement to also institute some authority to oversee their effect and their impact. We must know if they are effective, and if not, what can be done to make them so. We must also know after adopting these new tools if we have found solutions which might in some way sacrifice individual rights which are woven into the fabric of our most basic liberties. Title XII, establishing a National Commisison on Individual Rights, I believe, will accomplish this end.

In proposing this Commission, I was concerned that it not be limited to reviewing only the effect and impact of this legislation before us today. I believed it to be of more value to us in the future for this Commission to be empowered to review other anticrime legislation which we have recently adopted. I refer, of course, to the recent legislation regarding no-knock search warrants, wiretapping, and preventive detention, now part of bail reform in the District of Columbia, all of which I have supported. In this fashion we can collectively, as well as individually, determine the effectiveness of these measures and at the same time gain the advantage that an overview of this area can provide. For if we were to review each of these pieces of legislation individually, we would miss the impact of the overall study.

The purview of the Commission will also include a review of executive action which may infringe on individual rights, particularly in the area of data collection. It seems the actions taken by the executive branch in this area are in many ways outside the control of Congress. As Mr. ERVIN of the other body has pointed out:

Public concern has increased that some of the Federal Government's collection, storage, and use of information about citizens may raise serious questions of individual privacy and constitutional rights.

Thus, by including such actions of the executive branch within the jurisdiction of this Commission, it is my hope that we can learn if our basic rights are being abridged by an agency of the executive branch so that we in the Congress can do something about it. Further, the Commission will be able to study the interrelation of our anticrime laws and executive action to determine how each affects the use of the other and whether as a result there is an infringement upon our basic rights as protected by the Constitution.

This Commission will not be a review board for complaints against the activities of local law enforcement agencies. It has no authority to second-guess on law enforcement authority. Its function is only that of reporting to the President and the Congress how these laws are being utilized, if there is any infringement on individual rights and in light of these considerations to make recommendations. The Commission will make its reports at least every 2 years after it begins in office on January 1, 1972, and it will terminate after delivering its final report 6 years later in 1978.

Finally, I wish to comment that there has been some question raised as to whether this Commission would review State wiretappings. It would. Mr. Chairman, since the States may only wiretap pursuant to Federal law, 18 U.S.C. 2516, a review of wiretapping by a State agency is, therefore, directly within the province of the Commission which I originally proposed.

Mr. Chairman, I wish to thank the members of the Judiciary Committee for acting promptly and favorably on this proposal. I believe this Commission will fill a vacuum which many in this House and in the Senate have believed existed. I urge Members of the House to vote favorably for the crime bill.

Mr. BUSH. Mr. Chairman, I support S. 30, the Organized Crime Control Act of 1970. This legislation aimed primarily at the problems created by organized crime will permit improved fact gathering and trial procedures, create substantive criminal offenses for activities related to organized crime such as syndicated gambling and racketeering activity, and will assist the States in effectively regulating the disposition of explosives.

There can be no place in the 1970's for maintaining the status quo in combating crime. We need innovative ideas in this decade to solve the crime problem. The bill before us today gives law enforcement officials added tools in the war on crime while protecting the individual's rights. It is not a solution to the crime problem but it does provide new tools and clarify old ones. It does mark a major step in the vigorous attack on organized crime being pursued by President Nixon and Attorney General Mitchell. And, I am convinced that the section of the bill dealing with the transportation of explosives—quite similar to a bill I introduced—will have a meaningful effect in reducing terrorist bombings.

Mr. STRATTON. Mr. Chairman, I am pleased that we at last have an opportunity to take action on the Organized Crime Control Act, legislation that is designed to control and eliminate organized crime.

I have for some time been pushing to get this bill voted out of the Judiciary Committee, and some time ago I signed the discharge petition to bring it to the floor. Two weeks ago, here on the floor of the House, I joined my colleague from Oklahoma (Mr. EDMONDSON) to urge that immediate action be taken by the committee to report S. 30 and other crime bills to the full House for action. At that time I also strongly urged that the committee take prompt and favorable action on legislation to effectively deal with the increasing use of explosives by criminals on campuses and elsewhere that not only destroys property but can cost lives, as demonstrated recently at the University of Wisconsin. I am delighted that the committee has amended the legislation before us to contain a provision that establishes a system of Federal licenses and permits to help the States control the sale, transfer, and disposition of explosives.

Legislation to deal with the big business of organized crime is long overdue. Estimates on the gross earnings of organized crime vary from $30 to $60 billion per year. At minimum this is more than the total Federal funds spent on all the education and manpower programs over the last 6 years. S. 30 goes a long way forward meeting this problem and reducing what is a real threat to the well-being of our Nation. Mr. Chairman, I am proud to give my full support to this legislation and am pleased to see that it is supported by such an overwhelming majority of my colleagues.

With the passage of the Organized Crime Control Act, let me also take this opportunity to call upon the administration to use its full authority to enforce not only the provisions of the bill, but to use the authority provided by other legislation initiated and enacted by this Congress to cope with the serious crime situation in this country.

Mr. PRICE of Texas. Mr. Chairman, organized crime represents a deadly threat to the well-being of this Nation. The intrusion by organized crime into the national economy in recent years has become so great that it sullies the lives of millions upon millions of Americans.

Estimates of illicit profits from organized crime range as high as $60 billion a year. This is greater than the entire gross national product of Canada, which in 1968 was $59 billion. In this regard Time magazine reported last year that profits from the rackets are as large as the combined profits of United States Steel, American Telephone & Telegraph Co., General Motors, Standard Oil of New Jersey, General Electric, Ford Motor Co., IBM, Chrysler, and RCA.

Gambling is generally thought to be the most profitable form of illegal activity conducted by organized crime. The President's Crime Commission reported in 1967 that law enforcement officials believe that illegal betting on horse races, lotteries, and sporting events total about $20 billion a year, with a net profit to the mobsters of $6 billion to $7 billion a year. In any event, even if gambling is the most profitable of the rackets, and there are those who believe loan sharking to be about equal to it, it is not the most lethal. The profits from gambling and usurious loans are funneled into financing the deadly narcotics trade. The profits to the mobsters in this racket are staggeringly high, as are the human costs of drug addiction, such as despair, and even death, and the social costs of mounting street crimes committed by addicts to get more money to buy drugs.

Mr. Chairman, the influence of organized crime is so great and so pervasive that, in my judgment, it will take drastic measures to root out and destroy the menace to our very civilization. It is with this thought in mind that I give my wholehearted endorsement to the bill before the House today, the Organized Crime Control Act of 1970.

While the act is admittedly no cure-all for the overall causes of organized crime in America, it will certainly help in significant ways to provide more crime fighting tools to law enforcement officials and harsher punishment to mobsters who up to this time have operated with relative safety from the law.

Although the House is voting basically on the measure that was passed in the other body earlier this year, the members and staff of the House Judiciary Committee are to be commended for the long hours of diligent work they spent refining the bill. Some 50-odd changes were made and over 50 amendments were offered. In sum, although I do not agree with all the provisions of the bill, I do think the committee's efforts are well worthy of support, and I urge my colleagues to approve the comprehensive proposals.

The general terms of the proposals are as follows. The first five titles of the act are designed to accomplish one simple purpose; to improve present fact gathering methods in criminal proceedings. Title I establishes special grand juries which may exercise more independence in fulfilling their duties and may sit for a period of time up to 36 months. In attempting to ferret out the facts, the grand jury may summon witnesses and compel them to talk by granting them immunity against the use of their testimony against them—title II. If they refuse to talk, they may be held in civil contempt—title III. And if they give false evidence, they may be tried for perjury. Title IV eliminates medieval rules of evidence which have hobbled the prosecution's ability to cope with this special type of grand jury witness. And if the witness talks and by so doing places his life in jeopardy, title V authorizes the Government to protect him or even to relocate him.

Titles VI and VII facilitate the actual process by which persons charged with engaging in organized criminal activities are tried. Title VI allows the Government to take a deposition of a Government witness and use it at trial if the

witness is for certain reasons not available. This not only protects the Government's case but the witness as well, for mobsters will have no motive to kill or kidnap a witness if his incriminating testimony is recorded and admissible into evidence. Title VII precludes litigation concerning claims of illegal electronic surveillance by the Government which could not have possibly produced evidence for the prosecution.

Titles VIII and IX create substantive criminal offenses related to organized crime. Title VIII makes large-scale gambling operations in violation of State law a Federal crime; it also outlaws bribery of State and local officials in connection with such gambling enterprises. Title IX makes it unlawful to engage in a pattern of racketeering activity as a means of acquiring, maintaining, or conducting a business, and creates civil and criminal remedies for this offense such as are found in antitrust law.

Title X establishes a postconviction presentencing procedure for determining whether the defendant is a habitual or professional offender, or a member of an organized crime group. Such an offender may then be given an extended sentence by the courts.

Perhaps one of the more significant portions of this legislation was recently added to the bill by the Judiciary Committee. This provision, title XI deals with the regulation of explosives, for the recent increase in the number of criminal bombings across the Nation points to the need for immediate action in this area. Whether regulating the procurement of explosives is the answer remains to be seen. I took a different approach to the problem. I introduced legislation to drastically strengthen the penalties existing for violations of Federal laws concerning the use of explosives. My bill also provided death sentences for criminal bombings causing fatalities. In this connection, I have also introduced legislation designed to bring the full force and effect of Federal law directly and forcefully to bear upon anyone who murders a Federal, State, or local law enforcement official. Congress must also focus its attention on this vital aspect of the growing trend toward lawlessness in our society.

Title XII was also added to the Senate bill by the House Judiciary Committee. This provision generally incorporates the provisions of a bill I recently introduced providing for the establishment of a National Commission on Individual Rights. This Commission would be empowered to investigate Federal laws and practices as they relate to individual rights. At present there is no reasonably clear standard against which the freedoms of the individual can be assessed. We desperately need a reading on the state of individual rights. Then it can be determined what actions need to be taken to foster and preserve the liberties we all hold so dear. Under this title, the Commission will become effective 2 years from the time S. 30 becomes law. It will be authorized to make interim reports as it deems advisable and it will be required to make its final report to the President and the Congress within 6 years of its establishment.

Mr. Chairman, in my view the Organized Crime Control Act of 1970 represents an interlocking and comprehensive approach to the complex problems of fighting organized crime. Its passage is vital to the success of our efforts to exterminate organized criminal activity in the United States. While I am confident that the elected representatives of the people will shoulder their responsibilities and pass the bill, I have less than complete confidence that the American people will do likewise. For unless our citizenry, and particularly our Nation's businessmen, assume their fair share of concern and vigilence at the local level, where the warning signs marking the presence of organized criminal activity are usually first observed, then our society may prove powerless to stop the growth of organized crime and it may prove unable to eradicate its roots. Without citizen cooperation, organized crime may continue to increase more rapidly than all our efforts to turn it back.

Mr. GALLAGHER. Mr. Chairman I rise today to oppose the organized crime bill, not because I have any affection for crime or criminals, but because I have great affection for the United States of America and the great energizer of our freedoms, the Bill of Rights.

I will not comment on specific sections of the bill under discussion today which is so very similar to the one which passed the Senate by the disgusting vote of 76 to 1. I do not intend to list the entire litany of lament for liberty which can be chanted in legislative proposals and administrative actions. Nor will I mention again what is apparently an anachronism in the 20th century: Our Bill of Rights.

Rather, let me draw a comparison between what the leaders of the nationwide movement of support are saying and what was said by an Army major in justification of the complete annihilation of a Vietnamese hamlet. He said:

> We had to destroy the village in order to save it.

So very many legislative proposals and administrative actions suggest a domestic Gulf of Tonkin resolution which, under the guise of a response to hostile action, really set the stage for an open-ended escalation against our citizens and which will destroy a free America in order to save it.

What we are saying by the obviously overwhelming passage of this legislation is that freedom is so fragile that we need repression to preserve it. What we are doing today is adding one more incremental increase in the arsenal of those who do not respect the multiethnic diversity which is our Nation's strength. What our action today will mean tomorrow is that one class of men, one group of opinions, one vast subterranean subculture of those who embrace the surveillance mentality, will dictate our future.

This bill represents the victory of vindictiveness and is yet another signal of the death of democracy. This bill not only invades privacy: It destroys the decency which free men are supposed to feel in their relations with their fellow free men. It permits the growth of an atmosphere like a closed society, and will make all men who choose to follow a different life style to be passive pawns in the icy machinations of people who have no respect for law, little understanding of ordered liberty, and no compassion or affection for human nature.

Mr. Chairman, on Saturday, February 28, 1970, I spoke to the New Jersey Convention of the American Civil Liberties Union. At that time I spoke of Justice Holmes' admonition that the only prize much cared for by the powerful is power. The prize of the general is not a bigger tent, but it is command.

This bill, if it be misapplied, which it almost certainly will be, will spread a tent overshadowing all of our traditions and blocking out the light of liberty.

Many people felt similarly to the way I feel today when the alien and sedition laws were debated in the Fifth Congress. Edward Livingston, the only New Jersey resident to become Speaker of the House and who strangely enough represented the very area which I now have the privilege to represent, made the following ringing declaration: I point out that this was said in 1798; it is equally valid today:

> The system of espionage being thus established, the country will swarm with informers, spies, delators, and all the odious reptile tribe that breed in the sunshine of despotic power. The hours of the most unsuspected confidence, the intimacies of friendship or the recesses of domestic retirement will afford no security. The companion whom you most trust, the friend in whom you must confide, are tempted to betray your imprudence; to misrepresent your words: to convey them, distorted by calumny, to the secret tribunal where suspicion is the only evidence that is heard."

Mr. Chairman, I can think of no more precise description of the grand jury section of the bill under debate except to add that every man has enemies and those enemies will be welcomed in such a "secret tribunal where suspicion is the only evidence that is heard."

I just want to make one comment on the well-meaning proposal to establish a commission on individual rights. This pale placebo, this puny palliative, is alleged to show the concern of this House for the dreadful incursion on the sanctuaries of the human spirit which the rest of the bill encourages and which is a feature of so many activities in the Congress and the executive branch.

Mr. Chairman, the trends manifested in these so-called crime bills leads me to suspect that this Congress will seriously consider any proposal which has the label anticrime attached to it. I therefore will offer several pieces of legislation myself when the Congress returns after the election. Among these proposals will be:

First. Ban all window shades and curtains. Certainly no good American has anything to hide, certainly no law-abiding citizen will want to keep anything from anyone in authority, and certainly no Congress can refuse to pass such a bill which guarantees instant success on the war on crime.

Second. I will reintroduce my amendment which I first offered as a hopeful

alternative to the "no knock" provisions of the District of Columbia crime bill. As you may recall, that was to substitute a "no flush" amendment by making it a crime to have indoor plumbing. If there was nothing to flush the incriminating evidence down, we would not have to put down the Bill of Rights, and the loss of indoor plumbing would be a small price to pay for saving the fourth amendment.

Third. I will propose a strict system of domestic passports, with Federal agents stationed at every State line to observe and record the passage of every citizen from State to State. In this way, we can constantly observe which of our citizens goes anywhere; thus severely restricting their ability to cross State lines to commit crime.

Fourth. I will propose a single universal identification number to be branded on each baby at birth. This will eliminate the frequent confusion engendered by the sloppy existence of separate names for individual citizens and will permit instant identification of lawbreakers.

I recognize that each of these proposals may seem absurd but I believe they are consistent with the thrust of this legislation and are the logical outgrowth of our casual willingness to repeal the Bill of Rights.

Mr. Chairman, I insert the speech I gave before the New Jersey convention of the American Civil Liberties Union as well as a remarkable series of four editorials which appeared in the New York Times in April of this year.

SPEECH OF CONGRESSMAN CORNELIUS E. GALLAGHER

I have just come from Washington where, and as is usual, we are considering a great many different issues. One of the most important of these is pollution. We are all hearing a great deal about pollution in 1970,. and it is that subject which I wanted to discuss with you this afternoon.

I want to speak with you about a process of pollution which is viciously contaminating the blood-stream of our society.

It is not a pollution process which can be curbed by inventing new automotive engines, nor by imposing fines upon those who poison our water with industrial wastes, nor even by appropriating new millions for solid wastes disposal. One cannot help but wish that the pollution to which I refer were as easily conquered as these other varities.

I am speaking instead about a pollution that is occurring now as the Bill of Rights is slowly and invidiously burned out of our politcal system.

As in the case of industrial pollution, this political phenomenon is justified by well-meaning individuals on grounds that it is but an incidental, and perhaps regrettable by-product in the creation of some greater good.

This may indeed be a response, but it is not an acceptable answer.

My friends, never before in our history has the group of basic concepts embodied in the the first ten Amendments to our Constitution been under such constant and concerted attack as now.

Let me hasten to add that while this attack may not be the product of conscious parallel agreement between the attackers, and while it may not be motivated by malicious intent, it is no less dangerous.

In fact, it carries even a greater threat to our liberties than would an over-consciously promulgated invasion. For, which citizen of the United States would sit by calmly and permit such an overt assault on his liberties wtihout objection, without indeed, resistance.

But, when the assault on the Citidel of our rights is carried forward through a slow undoing of Constitutional commands by many who do not realize even themselves the probable result of their actions, then we face the very real danger that our rights will go out not wtih a bang, but with a whimper. Either way, they will vanish. The evil which can result from the work of well-meaning zealots is surely the equivalent of that which arises from the acts of blatant malefactors. It is the same stuff of which the road to hell has been proverbially paved.

Many of the areas in which fundamental freedoms have been placed in jeopardy fill the newspapers. For example, press reports force us to ask: where is the first Amendment right to free association, and freedom to petition the Government, when we have a Statute which prosecutes Americans on the basis of a bad state of mind when they cross a state line. I refer, of course, to the noxious, so-called "Anti-Riot" rider attached to the Civil Rights Act of 1968—a rider which I voted against.

If you will permit me a moments disgression from my specific topic here this afternoon, I would point out that the disparity between the justifications advanced in support of this rider, and the way it can work, and indeed has begun to work in practice clearly illustrate the phenomen of the well-motivated attack on rights of which I have been speaking.

The supporters of the Anti-Riot rider eagerly stated that it would be used only against the irresponsible radicals who were igniting our cities during the summer of 1968. Their admonition was, in other words, that we should not worry because good Americans would never use bad laws against good Americans. If this is offered as a new addition to our jurisprudence, then I choose not to accept it. A bad law is a bad law, and it is not restricted in impact to those who are defined, in some metaphysical manner, as bad people. One wonders who will write the definition.

And that is precisely the point. For the Anti-Riot rider can as easily be used against labor union organizers as it can against H. Rap Brown. Indeed, it has already been utilized to convict five demonstrators at the Chicago Convention who were never the less acquitted on the conspiracy charge.

Now, I am not expressing support here for the actions of those demonstrators which may have crossed the boundaries of legitimate dissent. But, I am questioning a Statute which convicts on the basis of what people may have been thinking—which creates a thought crime. As I stated in the House, when this rider was debated in 1968, what we perhaps require under this Statute are phychiatrists to travel with all potential protestors in order to guage accurately their state of mind as they cross a state boundary.

The true effect of bad laws is that they become worse. When we wink at the first tampering of basic rights, we best prepare to close our eyes completely to the panoply of assaults which will shortly follow. The increment of small decisions, which seem small enough when they are made, is staggering when taken as a whole: just one additional question on the Census: just one additional restriction on free speech; just one more data bank with no rules on content or access; just one more use for the Social Security number; just one additional privilege for Credit Bureaus; just one more area where the Federal Government may surveill its citizens; just one more job where lie detectors may be used to scrutinize employees; just one more use for a computer in setting highway speed traps—just one more out of *necessity!* That is the constant cry of those who seek to defend our freedom by denying it in just one more area, just one more time.

One cannot help but say with William Pitt that necessity too often has been the plea for "every infringement of human liberty. It has been the argument of tyrants, the creed of slaves."

But, as I stated before, at least in the outstanding cases, the press has called the public's attention. However, it is in the less-than-sensational areas that the true undoing of rights is now in progress. One of these—perhaps the most important of these—is the area of individual privacy.

The right of privacy, never explicitly mentioned in the Constitution, is the most pervasive of all our rights. Indeed, without it, our other rights fast become meaningless. Given this fact, it is on the field of privacy that the ultimate battle for our liberties will be staged.

Tragically, the right to privacy has been considered a troublesome step-child, if not an outright bastard son, of the Bill of Rights. We believe it is there, but are never sure where, or in what form, or, indeed, to complete the metaphor, how it ever got there. Accordingly, the assault on privacy has received minimal attention from both a press and public which are peculiarly unaware of its jeopardized status in our society.

Like any step-child or illegitimate offspring, privacy has not been accorded an equal position with the catalog of fundamental rights held sacred under the Constitution. Yet, let me say again that without the right to privacy firmly secured, the entire package of our other, acknowledged rights becomes as flimsy and frail as an Eddie Fisher marriage license.

Those who scribed the articles of and amendments to our Constitution were surely aware of this fact; their failure to mention the specific word "privacy" may reflect more their belief that its presence would be taken for granted by civilized men than that it was in any way irrelevant. So, privacy becomes today tthe pretermitted heir of the estate bequeathed by our founders: it is not mentioned in the document, but it is therefore not to be deemed intentionally cut-off.

The major constitutional source of whatever right to privacy we formally acknowledge has been construed as the Fourth Amendment. Perhaps that Amendment contains some of the most beautiful thoughts ever set down in a legal document: the integrity of persons, houses, papers, and effects are held secure against unreasonable searches and seizures except upon probable cause. Mere necessity would not be sufficient, according to our founders, in order to justify a violation of that security; something more would be required: probable cause.

The steady erosion of that founding conception has proceeded a-pace during the latter portion of the sixties and the opening months of this new decade.

But, our founders realized that a viable democracy depends on an atmosphere in which people can go their own way for the vast majority of their daily experiences and satisfactions, in which people can formulate thoughts and disregard them according to their own temperaments. Freedom from either subtle or overt coercion is the birthright of our citizens. If that coercion comes from a government which rationalizes its actions on the basis of beneficy it is no less coercion, for, as the late Justice Brandeis stated, "Experience should teach us to be most on our guard when the government's purposes are beneficient. The greatest dangers to liberty lurk in the insidious encroachments by men of zeal, well-meaning but without understanding."

In a nation as large and complex as the United States, a nation which contains so many different cultural and ethnic heritages, no single class of men can be permitted

to impose the standards of their group on the remainder of American society.

Yet, in a very real sense, that is exactly what is happening today.

During my years as Chairman of the House Special Inquiry on Invasion of Privacy, I watched with dismay as the strong commands of the Fourth Amendment have been time and again reduced to whimpering dicta with virtually no public outcry. I have tried to focus attention on both private and governmental invasions of privacy, and to the manner in which these attacks threaten to tear apart the fabric of our democracy. I have attempted to sound the clarion call of the Fourth Amendment amidst a cacophony of trumpeted justifications for its de facto abandonment.

Nevertheless, while there have been some successes, all too often my calls are greeted with bewildered replies: where is this right to privacy? Why is it that crucial? What does any good American have to hide from any other good American?

Sometimes, indeed, the most obvious of points are the hardest to grasp.

The Constitution contains guarantees against those methods of privacy invasion which were prevalent in the 18th Century: accordingly, our Constitution states that a man cannot be compelled to give up his home to quarter troops: he cannot be forced to give testimony against himself: and, again, he has the right to be secure in his person, papers, and effects.

But, the 18th Century did not possess the computer. The 18th Century did not have sophisticated electronic eavesdropping devices. The 18th Century did not know of miniature surveillance mechanisms which can fly by satellite over the earth and still record even the fall of a sparrow.

Could any man believe, however, that the authors of our Constitution would consider these phenomena of the twentieth-century beyond regulation? That the authors who sat in Philadelphia in 1787 would consider the dangers to privacy of 1970 irrelevant?

Yet, while none would make such dangerous assumptions in theory, the public response to the 20th century modes of privacy invasion has been rather benign.

Unfortunately, the Courts have responded in similar fashion.

The precepts of Griswold v. Connecticut—which is cited as the major Supreme Court acknowledgment of the right to privacy—have been read largely as dicta by the courts below. These lower tribunals have been reluctant to go beyond the narrow holding as they read that holding in the Griswold case.

What did Griswold say? It stated that the specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance. Thus, various specific guarantees create zones of privacy. These are compelling statements, yet they are read as dicta, when the lower courts are confronted by specific breaches of the so-called privacy zones.

But if man is a free creature under our Constitution, then privacy precepts must be more than rhetoric. For example, if citizens do not have the power to associate for political purposes without their names and photographs being entered in a government data bank, then what happens to the First Amendment? If citizens cannot speak without fear of constant surveillance and eventual public disclosure of every word they have uttered, then what becomes of our concern for rights that are chilled out of existence?

It is my contention that the security offered to persons under the Fourth Amendment is no less than the very security to live as a human being.

Man as a physical animal may reside in a house of brick and mortar. But, the true nature of man, as man, of necessity resides in far more intangible structures; it resides in his thoughts, in his private words, in his interpersonal relations with friends, and enemies, of his own choosing. The right to privacy, then, is the right to expend our moral capital, to withhold or extend love, affection, fears, doubts, and thoughts with virtually no restraint.

A man stripped of privacy is a man stripped of his life.

And at least, they shoot horses, don't they?

The Fourth Amendment permits man a space of protected withdrawal of the world; it allows him to refine his judgment before making them public. The boundaries circumscribed by the Fouth Amendment create what I have termed the "intellectual imperative," an area of psychological living space in which man has control over the spread of information about his actions and his beliefs. This psychological living space is not unlike the "querencia" of the bull, where the matador may enter only at his own peril.

The intellectual imperative is an attempt to translate the guarantees of the Constitution into a viable and coherent theory in order to provide a credible counterweight to the incredible sophistication of information technology and governmental power.

The Fourth Amendment, because it cannot be readily attached to such familiar issues of freedom of the press or freedom of dissent, has been most easily breached by the new technology and its technocratic administrators. These privacy invaders are no different in kind from those who have traditionally threatened liberties throughout our history; their only distinction is their overwhelming sources of power, making ultimate dictatorship operationally possible.

At the very beginning of the American experience, many saw a threat of our infant republic in the proposed Alien and Sedition Laws. In the debate over those laws in the Fifth Congress, Representative Edward Livingston, of our own state—who was the only Congressman from New Jersey to ever become Speaker of the House—made a ringing declaration of what would happen to society should the Federal Government ever be empowered to strip away protections of the individual. In a passionate speech, Livingston made one of the most accurate predictions of the future actions against freedom. In 1798, Livingston stated:

"The system of espionage thus being established, the country will swarm with informers, spies, delators, and all the odious reptile tribes that breed in the sunshine of despotic power. The hours of the most unsuspected confidence, the intimacies of friendship or the recesses of domestic retirement will afford no security. The companion whom you most trust, the friend in whom you most confide, are tempted to betray your imprudence; to misrepresent your words; to convey them distorted by calumny to the secret tribunal where suspicion is the only evidence that is heard."

Let me repeat, that was stated before we had forced immunity statutes—that was stated in 1798, and not in 1984.

But, how close today we are to 1984, not only in years, but in practice.

To make the Fourth Amendment a functional factor in a technologically sophisticated world requires unceasing vigilance, not unceasing corrosion. The dangers facing the Fifth Congress are still those facing the Ninety-First, only compounded by years of scientific progress.

For the United States now has the capacity to establish a system of strict records surveillance which was, and is, the hallmark of European totalitarian states and which was specifically rejected by our Founding Fathers. The files of federal, state, local, and private agencies bulge with dossiers on Americans. Computerized information systems have provided the means for the most far-reaching assault on our privacy that has ever been conceived by the mind of man. Recent investigations of my inquiry disclosed that a private credit organization confidently expects to have the record of every man, woman, and child in this country within its computerized system within 3½ years.

A computerized credit reporting firm in our State of New Jersey contains dossiers on more than 23 million Americans today; as if this were not enough, this New Jersey firm deals only in providing adverse information on those within its files and those who may be within its files tomorrow.

An individual's credit history can be retrieved and read anywhere in the country within two minutes after the request is initiated. And this process was dramatically demonstrated at my hearings in March, 1968.

Thus, how do we make due process of law relevant in 1970 when a single reel of magnetic tape, containing the intimate personal details of thousands, perhaps millions of lives can be transferred from a computer in one jurisdiction to a computer in another jurisdiction within minutes?

Where is our reverence for the individual when eminent social scientists, at a seminar I attended two years ago, seriously proposed to use low cost housing as a great pool of research by bugging each room of a federally sponsored low-rent project. These well-meaning sociologists honestly proposed to make machine-readable every single sentence uttered by the apartment residents for a computer which would then deliver a profile of these Americans for future study.

Is this the brave new world which we sought in 1787? And where is the Constitutional restraint on federal power when the Government proposes a National Data Bank to keep records on all Americans and make them available for virtually all purposes. Is this the same society which held itself forth as the new home of the homeless despairing of Europe and Asia?

This week, I have commenced an investigation into a computerized data bank planned by the United States Army which would contain information on all American citizens who participate in various protest movements and demonstrations—the name of every person in this room is probably being prepared for placement on that list.

Throughout history, we have regarded ourselves as the nation of a second chance. Immigrants came to our shores because we offered the chance for a new beginning. Yet, the constant employment of our new power to weave a web of data around each individual, to recall and hold against each person; every event in his past threatens to make this a one-chance nation. We are threatened with programing redemption out of American life.

This is not, I submit, what the United States of America is all about.

This is not the type of society which so many hundreds of thousands have given their lives to preserve.

My friends, I must be candid with you and reveal to you my firm belief that we are in the process of losing our form of government and our way of life as it has developed since the founding of our Republic.

We are replacing democracy with something else, with something we have rejected throughout our history.

Perhaps an illustration of what I mean may be found in the fact that a change from democracy to totalitarianism in those European states where such a change occurred was always preceded by stripping away of the same concepts as those guaranteed by our Fourth Amendment.

The ruination of individual privacy has always heralded the destruction of human freedom.

Indeed, the greatest privacy invader dossier collector and information keeper known to this century was Adolph Hitler.

And Hitler carried forth his privacy invasion, his destruction of the human personality without the benefit of computers—though I should tell you, in all seriousness, that one of the first orders for the new IBM punch cards was placed by the government of Nazi Germany.

And so, as the information keeper and technological zealots of 1970 America pursue their well-meaning course, let us remember the admonition of Justice Holmes that the only prize much cared for by the powerful is power. The prize of the general is not a bigger tent, but it is command.

Total information about individuals means total control over those individuals. One cannot argue that this information will be used for benevolent purposes, for the very existence of the information creates its own demands, and its own power. The vacuum which a democratic political system of necessity creates is easily filled by total surveillance mechanisms. And once it has been filled, we have something other than democracy.

And so, I am fearful today, fearful for the future of America. The new technology is carrying us in a rapid plunge towards the end of freedom. We have made dictatorship an operational possibility.

There are those in the government who are trying to use the opportunities for control created by this technology precisely for that purpose. As I stated when I began this afternoon, these men may be, and no doubt are, motivated by sincere intentions; but the effect of their actions is astounding.

They have created an atmosphere of terror in this society, a terror which is being utilized to justify taking a torch to the Bill of Rights. Their attack on the Fourth Amendment is no less than an attack on all of our freedoms for, as we have seen, privacy is indispensable to an exercise of those freedoms.

We are facing a new Joe McCarthyism in the United States. Only there is a difference. The current version is worse, since the prototype was never actually given the legitimate substance of legislation.

Let me be specific. In January of this year, the United States Senate passed by a vote of 76 to 1 what is perhaps the most unconstitutional piece of legislation ever conceived in Washington; I refer to the new so-called omnibus anti-crime bill.

It may be an omnibus bill, but the only crime involved is that of ever having passed it.

This is a bill which erodes the Fifth Amendment, threatens the Sixth, and destroys the Fourth. As Tom Wicker of the New York Times pointed out on February 1, this bill raises the greatest threat to liberty in America in recent times. And, also as Wicker stated, the legal establishment in this country—of which you men are representatives—has a special responsibility for exposing the consequences of this momentary political hysteria.

Those who urged this bill have tried to be so zealous in their efforts to fight crime that—as Senator Sam Ervin put it—they would emulate the example set by Samson in his blindness and destroy the pillars upon which the temple of justice rests.

The precepts contained in this bill violate the fundamentals of Anglo-Saxon jurisprudence. The philosophy behind this bill is that catching the criminal, or the suspected criminal, validates any invasion of rights guaranteed to all of us. However, our system has been traditionally and wisely based upon the principle of no undue harrassment, of secured rights above all else; we have said, with Justice Holmes, that it is less an evil that some criminals should escape than that the government should play an ignoble part.

Ignobility is hardly the word to describe this current aberration. The new bill creates a new type of Grand Jury which will do nothing but issue reports on the activities of local citizens who the Government does not have the necessary evidence to indict, much less convict. If this does not smack of a modern-day witch hunt, then I am sorely off the track. This is Edward Livingston's warning come true: a court where suspicion is the only evidence which is heard. Even more dangerous, this suspicion is to be widely publicized.

The bill puts a Statute of Limitations on the Fourth Amendment by admitting all illegally seized evidence as long as the trial occurs at least five years after the seizure. I know of no place in the Constitution where it permits a time limit on Bill of Rights guarantees.

Yet, this bill was passed: 76–1, in one afternoon. And who is to blame? All of us, every single American who failed to rise up at the first invasion of our liberties. Now it has come to this.

When one wonders why our youth are so frustrated, why our society has seemingly become so ominous and terrifying to them, perhaps the reason lies in the subject I have discussed with you this afternoon. Perhaps this is why our inventive young people have devised a new shorthand language and why they depend on poster slogans; posters cannot be tapped, as yet. For perhaps it is our young people who see more clearly than ourselves the steady erosion of human freedoms in the United States. They feel more than we the pressures of a surveillance society. They sense more than we the threat of a big-brother State which merges end-and-means in the most Machiavellian of schemes. They have known, more than have we the coming of a different America than exists in the history texts. We can tell them about the America that we think exists—but perhaps they know it does not.

I do not believe that the cause is overstated. The Fourth Amendment, that energizer of the Bill of Rights, is losing its place in our society. As it falls under the tramping feet of the privacy invaders, it takes with it the totality of our basic freedoms.

The time has come to reverse the process. The time has come for our legal system to reform its laissez-faire concepts toward the right to privacy. We must institutionalize the concept that the individual is autonomous in the vast majority of his experiences, pleasures, and actions. As long as one is not under direct suspicion for a specific crime, with probable cause, one must have the absolute right to control access to records of the events of his life.

Moreover, we must re-affirm our dedication to the jurisprudential principle that the awesome power of the government will not be considered equal to the power of the individual. The scale must always be tipped in the individual's favor—otherwise, Mrs. Mapp will lose her home, and Gideon his lawyer, and Mallory his physical integrity.

It is no excuse for this government to yield to totalitarian temptation on the grounds that there are radicals in the streets or ogres in the shadows. We have not yet reached the point in our history where our freedom is so fragile that we require repression to preserve it.

That has never worked. It will not work in the United States.

If man loses the intellectual living space which his humanity requires, then he becomes far less than man: if a free man loses that space, he indeed becomes a slave.

The question is whether the exigencies of any moment can ever justify our willing enslavement to political hysteria?

Thus, I call upon you as lawyers, as citizens, and as free men to raise high the standard of individual privacy, to re-dedicate your own efforts to a constant and aggressive concern over the subtle undoing of our Constitution. I have nothing but admiration for the work of this organization, for you have dedicated your lives—and often enough your potential fortunes—to those principles which make our lives worth living.

For this, free men can only offer thanks.

It is my hope that with your hands, and your help we can together provide the reawakening which is necessary among our citizens in order that the current invaders be repelled. Let us go forward with the wisdom of Holmes that *truth* is the only ground upon which our wishes can be carried out. That, at any rate is the theory of our Constitution. It is an experiment, as all life is an experiment.

It is time to make the American experiment a continuing, everyday reality. I believe that the ACLU's goals have always been in this direction and perhaps if we are both effective and fortunate, others will see events in this same light. This may come in time; but my whole point is that there is not much time left.

Thank you.

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THE THREAT TO LIBERTY—I

Each morning in schools throughout this land, millions of children pledge their allegiance to a nation indivisible with liberty and justice for all. This daily ritual is beginning to lose all meaning as America's fundamental principles of freedom are being undermined. Civil liberties, though indispensable to the goal of the open American society, have suffered periodic setbacks in the past, both under Democratic and Republican Administrations. But there is cause for the gravest concern over the currently evolving pattern of overt and subtle policies which tear at the fabric of a free, pluralistic society.

Group appeals, sectional politics, harsh and divisive statements and, most important of all, repressive administrative actions and retrogressive proposals and laws are directed from the highest sources of Government against dissenters and nonconformists. The principal target is that very large number of peaceful and determined Americans—many of them in the younger generation—who do, openly and democratically, want to challenge the Establishment and effect peaceful social change.

The Administration tactics are rendered all the more sinister because they are often contradictory and elusive. Amid high-sounding reaffirmations of the right to dissent, the Government prosecutes those among dissenters whom it sees guilty of conspiracies. Amid talk of the maintenance of law and order, an epidemic of electronic eavesdropping creates conditions approaching governmental lawlessness and moral disorder.

In the difficult period through which this country and this world are moving, doubts about war, poverty, discrimination and the economy inevitably create severe tensions. Some few Americans who despair of rational answers have in fact lost all hope in the law, have finally rejected peaceful methods of change and have succumbed to the delusion that violence offers some kind of answer. When these elements act illegally as they now frequently do, they can and must be dealt with through strict, but fair, enforcement of the law.

But the vital point in repression of violence in a democracy is that fear of what a few dissenters may do. The voicing of threats or the mere expression of dissent cannot excuse suspension of the Bill of Rights or of those civil liberties which alone justify faith in representative democracy.

When Congress passed the antiriot laws of 1968, it gave the government the dangerous option of prosecuting men, not for what they have done, but for what thoughts they are suspected of harboring in their minds. Armed with that hunting license, the Nixon Administration has proceeded to un-

dertake what can only be described as political trials, viz, in Chicago last fall.

The Senate Judiciary Committee has approved a bill that would make it possible to punish provocative speech, thus ignoring the advice of Oliver Wendell Holmes that, in any instance of offensive or false oratory, "the remedy to be applied is more speech, not enforced silence."

Under the guise of security, the Justice Department, resorting to inquisition by questionnaire, is trying to bar protest demonstrations in the vicinity of the White House.

Attorney General Mitchell, pleading the need to protect the flow of traffic, has called for an "updating" of the laws governing protests and demonstrations. He conveniently differentiates between "prospectively peaceful demonstrations such as American Legion parades" and what he suspects to be "demonstrators who are trained to force confrontations with police."

Is freedom of speech and assembly to be suspended because the words that might be uttered may prove provocative? Charles Evans Hughes was applying the Constitution, not espousing revolution, when he warned: "Guilt is personal and cannot be attributed to the holding of opinion or to mere intent in the absence of overt acts."

Those who condone the Government's increasing resort to repressive cautions cite the dangers of violent or illegal acts. But to suggest that the Bill of Rights can be temporarily ignored in times of discord and anger would be to turn the Constitution into an impotent, bloodless document.

It is not in harmonious times that liberties require protection. It is in days of doubt that the rights of the unpopular few must be upheld, if the liberties of the many are to remain safe.

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THE THREAT TO LIBERTY—II

Less than a generation ago, the tapped wire, the bugged room, the secret informer evoked contempt and ridicule in the minds of most Americans. These were the marks of police states in a jaded Old World. It could not happen here.

It is happening here now.

The argument over the wire tap is no longer whether, but how much, by whom, and how it can be made admissible evidence in court.

Leslie Fiedler, a literary critic and teacher, was recently convicted of allowing the use of marijuana in his home on the basis of information supplied by a teen-age girl, a "friend of the family." She had acted as a police spy and recorded private conversations with the aid of a microphone concealed in her dress while she was a guest in Mr. Fiedler's house.

In 1920, Attorney General A. Mitchell Palmer, following some anarchist bombs and bomb threats, wrote in his annual report: ". . . There must be established a systematic and thorough supervision over the unlawful activities of certain persons and organizations . . . whose sole purpose was to commit acts of terrorism or to advocate, by word of mouth and by the circulation of literature" the subversion of the government.

Mr. Palmer boasted of a file containing 200,000 biographies and records of speeches of persons "with radical connections." Such dossiers seem puny compared to the store of computerized intelligence data banks maintained today by a host of agencies, from the Justice Department to the military.

No serious student of history now believes that the Palmer forays against civil liberties contributed to the nation's survival. Yet, his obsession with surveillance and his scrambling of action and advocacy are once again being elevated to public policy, with infinitely greater efficiency.

Under the guise of essential attacks on crime, police and investigatory powers are being sharpened for potential use against political offenders. Preventive detention is being advocated, when too many suspects are already imprisoned too long before being brought to trial. No-knock entry into private premises and the rifling of confidential records are being justified as weapons against narcotics.

Political snooping has seriously jeopardized the confidentiality of income tax returns and diminished the privilege of reporters' files. Personal mail is increasingly subject to scrutiny.

As if to underscore the hegemony of the police mentality, even at the Cabinet level, the Attorney General has overruled the Secretary of State in denying a European Marxist scholar's request for admission to attend a scholarly meeting here.

There are those who say that the growing reliance on surveillance, with lines blurred between the legitimate attack on crime and the illegitimate repression of dissent, is the price of America's role as a great power, but that is to misread the country's destiny. The nation's greatness springs from its dream of greater freedoms for all, not from a nightmare of restricted liberties for some. Today, no less than in earlier times of trouble, the Bill of Rights offers the best, perhaps the last, hope to carry the torch against the forces of dark suspicion and fear.

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THE THREAT TO LIBERTY—III

The erosion of the nation's civil liberties cannot be charged against any one Administration or party. The virus of electronic surveillance and the incursions into personal rights, through the abuse both of laws and of technology are the toll of wars, hot and cold, and of declining confidence between government and governed.

Terrifying new, however, is the Administration's open exploitation's of fear and discord. Verbal excesses and insinuations, apparently condoned by the President himself, have rendered suspect the Government's reaction to dissent and even to high-level disagreement on the part of the loyal opposition. Vice President Agnew not only rails against "the whole damn zoo" "of deserters, malcontents, radicals, incendiaries, the civil and uncivil disobedients," but also hints darkly that Senator Muskie, in challenging the Administration's arms policies, "is playing Russian roulette with U.S. security."

Other Administrations have been vexed by the intemperate language of their detractors; but there is a disturbing appeal to the nation's lowest instincts in the present Administration's descent to gutter fighting. It undermines the dignity of government so vital to that atmosphere of calm and reason in which civil liberties can flourish.

By attacking the alleged influence of outside agitators—in the inciting of riots as well as in the Senate's vote against Judge Carswell—the Administration revives earlier anxieties over Mr. Agnew's dark hint that "rotten apples" of dissent should be "separated" from society.

When dissenters are thus treated, are they being prepared for inferior citizenship? The prospect is as troubling when the dissendents are young Republicans, labeled "juvenile delinquents" for their audacity in breaking ranks, as when they are the "liberal media" reporting the news or taking a stand for freedom of speech and the right to privacy.

By his extraordinary suggestion during the ugly fight over the Carswell nomination that the South be credited with a separate "legal philosophy," President Nixon directly exacerbated regional as well as racial disunity.

Attorney General Mitchell, in holding that the Justice Department is ruled by pragmatism rather than any philosophy, stimulates the raw appetites of those who stand ready to ride roughshod over rights which are protected by philosophic principles rather than pragmatic power.

It is chilling to learn from a recent poll that a majority of Americans have responded to the politics of fear by declaring themselves ready to restrict the freedoms guaranteed by the Bill of Rights.

Fear saps a nation's strength. It sets one neighbor against the other. It is an illusion for any government to believe that it can turn fear to its advantage. Those who try to divide in order to govern are running the risk of making a divided nation ungovernable.

Abraham Lincoln, in an earlier crisis, prayed for "a new birth of freedom." Today, the answer is not in electronic surveillance or a consensus of silence; rather it is in reliance on law and justice, on the Constitution and on an appeal to the decency of free men to let freedom triumph over fear, and civil liberties over political strategies.

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THE THREAT TO LIBERTY—IV

Civil liberties are held in contempt by extremists of right and left alike. Convinced of their own righteousness, the dogmatists at both ends of the political spectrum characteristically believe in freedom for themselves but rarely for those who reject their ideological discipline. This narrowly restrictive view of freedom is normally accompanied by a self-indulgent approach to violence as an appropriate terror-weapon against the ideological enemy.

Thus it is not surprising that the new breed of campus revolutionaries, intent on destroying all freedom except their own, are now turning to what they call "trashing"—the setting of fires, hurling of rocks, smashing of windows—ominously reminiscent of the shattered storefronts with which the Nazis sought to intimidate their political opponents a generation ago.

Ritualized violence indiscriminately destroys the rights of its victims. It also escalates of its own accord. A group of distinguished citizens who arrive at Harvard to carry out their duties as trustees of an international studies center are held prisoners in their cars by a radical mob—and their meeting has to be disbanded. A cafeteria is vandalized at Hunter. Books are burned at the Yale Law School. The President of Pennsylvania State is forced to flee, with his family, as student rioters stone his home at night. A bank is burned down in Santa Barbara. At the Center for Behavioral Studies in Stanford, arsonists destroy research papers including the lifetime work of a visiting foreign scholar. An anti-war rally turns into an orgy of violence and vandalism in Cambridge, leaving small shopkeepers the principal victims. On a quiet block in Manhattan, radicals blow themselves up as they manufacture bombs for their demented warfare.

In part, this is guerrilla theater of the absurd, fashioned by alienated children of affluence who are striking out blindly against the Establishment. But in part it stems from the aim of more sophisticated and more sinister theorists to entice governmental authority into acts of political repression and thereby to stimulate such a broad-scale counter-reaction as to invite genuine social chaos.

A justice of the United States Supreme Court wrote in a recent opinion:

"Radicals of the left historically have used those tactics to incite the extreme right with the calculated design of fostering a regime of repression from which the radicals of the left hope to emerge as the ultimate victor. The left in the role is the provocateur . . . The social compact has room for tolerance, patience and restraint, but not for sabotage and violence." The author of these words is William O. Douglas.

Whether from left or right, the most extreme thoughts and the most offensive rhetoric are entitled to protection of the Bill of Rights. But, as Justice Douglas suggests, when thought is translated into unlawful or

violent action, it is equally imperative that the full force of the law be invoked to protect the community, not only from the coercion itself but from its consequent aftereffects. And this applies with particular force to the academic community, where protection of freedom is most precious and its security most fragile.

If the campuses are to be permitted to function as staging areas for violence, the academic community jeopardizes its fundamental role as freedom's protector; to impair academic freedom, whether through internal coercion or external repression, is to shut off civil liberties at the source.

The defenses of freedom requires vigilance against all forms of violence, coercion or repression. The safeguard of the people's legitimate powers is the rule of law under the Bill of Rights. No government, nor any dissident group, can defy that rule or abridge those rights without being guilty of the ultimate and intolerable subversion of the American ideal and the democratic reality.

Mr. RARICK. Mr. Chairman, we are being asked to support S. 30 which purports to enact new laws relating to the control of organized crime in the United States. A review of the bill should impress anyone that we are surrendering to the U.S. Attorney hertofore unheard of powers.

Perhaps because I am a Southerner and a former judge, I immediately become suspicious of every new surrender of power to the Federal bureaucracy without any proection or limitations against future tyrannical misuse. For example, section 848. Effect on State law, reads:

No provision of this chapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject matter, unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together.

From past experience we should all understand that this provision means that the States and local government have again lost in the power confrontation with their government. When there is a conflict between the State and Federal laws the Federal Government always wins. We are not being called upon to enact legislation for this hour; if this bill is passed into law, and I am sure it will be, it becomes permanent law hereafter.

The provisions of S. 30 give the U.S. attorney every conceivable tool with which to control and retard, if not eliminate, organized crime. But, what happens when a different U.S. attorney comes into office? I shudder to think of how the legal tools of this bill could be misused by a vindictive and revengeful U.S. attorney. We must remember that henceforth the term "racketeering activity" is given a very broad definition and very well could extend to some activities of our labor unions and very definitely to counterrevolutionary activities.

It is truly unfortunate that breakdown in law and order and disrespect for our system of government and justice have brought us to this crossroad. Who can be blamed, except for the liberals, moderates, and do-gooders who have so generated a public opinion, demanding action that we as the peoples' representative would give the Central Government the power for a complete police state establishment.

The bill is intended for a good objective, yet again, in many of the areas of crime the Federal authorities have not taken appropriate action by using the laws that are now on the books. They too, along with the judiciary, have helped create this atmosphere of desperation.

Weighing the good of purpose against the inherent threats against our freedom, I must cast my people's vote in favor of the bill, if for no other reason I do not want to spend the rest of the year explaining how I could oppose a bill to control organized crime.

I hope and pray that the wisdom of future generations will understand the emotionalism of the hour and forgive us should the extraordinary powers here surrendered to the executive branch of the Federal Government be misused.

Mr. VANIK. Mr. Chairman, the House is considering today S. 30, the Organized Crime Control Act of 1970. The bill attempts to meet certain problems caused by the difficulty in breaking up racketeering operations and criminal syndicates.

There can be no argument that organized crime is a major problem. It is estimated that the profits obtained by organized crime from illegal gambling alone amount to $50 billion annually. There is evidence that organized crime has its hand in the dangerous drug traffic. It affects the poor through loansharking operations. It has entered politics at every level. It is moving in on businesses and the president of the New York Stock Exchange suspects that it has even begun to make an entry into the stock market and securities firms on Wall Street.

This bill endeavors to solve the problem of organized crime through 10 principal titles.

First, the creation of special grand juries to investigate the behavior of public officials. Second, a new interpretation of immunity which will result in more testimony trials and less evasion. Third, authority to act against recalcitrant witnesses. Fourth, increased power to prosecute for perjury and false declarations. Fifth, provision for protected facilities for housing Government witnesses. Sixth, increased authority for Government to preserve and use depositions. Seventh, a limitation on challenges of admissibility of evidence. Eighth, the creation of new and expanded penalties for syndicated gambling. Ninth, the Government is given powers to investigate and more against racketeer influenced and corrupt organizations. Tenth, provision is made for special sentencing of dangerous offenders.

There is an 11th title, long overdue, which puts regulations on the transfer and sale of explosives in an effort to keep them out of criminal hands. In addition, there are increased penalties for the illegal use of explosives. As the representative of the city of Shaker Heights, Ohio, where a courthouse-police station was blown up in early February, I introduced one of the first bills designed to provide controls over the availability of dynamite as an instrument of mass destruction and death. I am particularly pleased to see that my suggestions, made in testimony to the Judiciary Committee, regarding adequate safeguards on the storage of explosives have been accepted. In addition, the committee's amendment, which includes language which recommended providing enforcement by the Department of Treasury's trained agents, is much better than the administration's recommendation that the explosives laws be enforced by the Department of Interior, which has virtually no trained agents in this area. This title should go far toward ending the wave of bombings which has marked the last year.

Yet, Mr. Chairman, this is the third law enforcement bill to come before the House this Congress in which long-range constitutional questions are raised.

As in the District of Columbia crime control bill, which contained questionable no knock and pretrial detention provisions and the drug control bill, which also contained no-knock provisions, today's bill contains sections which raise constitutional questions. There are other sections which are good and which are needed. There are sections on which I would vote "no"; there are sections on which I would vote "maybe"; but in balance, the bill contains more good than bad and I must vote "yes."

If the administration is really serious about crime control it would quit urging the passage of bills which deliberately raise constitutional questions.

In fiscal 1971, the Federal Government will spend approximately $1.3 billion on all Federal crime control, court, and corrections programs. This is a little more than the administration was willing to give to Penn Central and Lockheed, it is a little more than what we have committed to the SST to date, it is a little more than the extra billion subsidy we gave the merchant marine this year.

It has been clearly pointed out that the narcotic addict is a major contributor to street crime since he needs to steal about $400 to $500 a day in merchandise to maintain a $75 to $100 a day drug habit. Yet the administration has requested only $5 million for the Narcotic Addict Rehabilitation Act of 1966 which attempts to cure addicts. Juvenile delinquency is one of our major problems. In 1969, 43 percent of all persons arrested for robbery were juveniles. Despite this fact, the administration requested only $15 million in fiscal 1971 for the Juvenile Delinquency Act of 1968—a sum that is actually $4.2 million less than that requested by the Johnson administration for fiscal 1969.

The major Federal anticrime program, the Safe Streets Act of 1968, has been badly underfunded. For fiscal 1971, the administration requested only $480 million for this program of grants to States and cities. This is $90 million less than the police department budget of New York City alone. Fortunately, the House has authorized $650 million for this important program. I would be willing to see more, much more spent on controlling crime which threaten every citizen in every community.

Mr. RANDALL. Mr. Chairman, I rise to support S. 30. I suspect all but a handful of the Members of the House will support this bill on final passage. At long last we have a legislative response to the terrifying effect of organized crime upon this country and on its people. This legislation is not only urgently needed but long overdue.

I am proud to have been the sponsor of a discharge petition filed on September 14 on my own bill, H.R. 18279 dealing with organized crime which was similar as to be substantially identical to S. 30. I filed my discharge petition at a time I thought such a means was the only possibility of getting action this session of Congress on a needed tool to fight organized crime.

I have no way of knowing what influence my discharge petition may have had upon members of the committee. It is significant to note that the Washington Post on the 18th of September 1970, said in an article by John P. MacKenzie that the chairman, the gentleman from New York (Mr. CELLER) was under heavy pressure to work toward a tentative agreement to report out an organized crime bill or else the conservatives on the committee threatened to join in a petition filed on the preceding Monday, September 14, to discharge the crime bill from his committee. That was the date of my discharge petition.

After the discharge petition was filed the Judiciary Subcommittee, handling S. 30, in a most rare and unusual night meeting of that subcommittee announced that it would continue to meet at night until agreement was reached on the content of the bill. Such facts were reported in the CONGRESSIONAL RECORD. The next day one of my staff made a notation in handwriting in the margin of the sheet of the CONGRESSIONAL RECORD, "look what you have caused."

Now, I have never suggested that my discharge petition was entirely responsible for causing the Judiciary Committee to report out S. 30. The facts are the committee had been under pressure from the administration, from their colleagues and more important from their own constituents to do something about the excellent bill passed by the Senate early in 1970. I do suggest that by the time the first page of our discharge petition was filled and the number of signers had reached more than 30 in number from both sides of the political aisle, the committee apparently decided that the time had come to act without any more foot dragging or further excuses.

I received no complaints from most of the members of the House Judiciary Committee. However, one high-ranking member of the committee asked me on the floor of the House, "Why did you have to do this?" My answer to him was that I was not a member of the committee and that I had no other parliamentary tool or weapon to accelerate action other than to file a discharge petition. My further response to all who discussed the petition with me was that those who preferred to do so could go on home to face an angry electorate if there was no organized crime bill but for my part I intended to take the necessary steps to show that I had tried to discharge the equivalent of S. 30 from the Judiciary Committee by the only remaining means available which is under a discharge petition.

I take this means to thank those 30-odd Members of the House who courageously signed discharge petition No. 8. It has been their privilege already to make that fact known to their constituents long before the passage of this bill. I suppose the fact that they could truthfully make such an announcement is compensation enough for their forthright action.

Mr. Chairman, I, for one, was not impressed by the statistics recited on the floor that the Judiciary Committee after 13 days of hearings and 7 days of executive session had finally reported out the bill. The harsh but truthful facts are this Nation could have had the protection of this bill to control organized crime months sooner than will now be the case if only our Judiciary Committee had acted. Remember this bill was referred to the House Judiciary Committee just after the first of the calendar year, which is months and months ago.

Those who would charge we are acting under hysteria or in passion today are so very wrong. This bill was deliberated upon in the other body for nearly 12 months. This bill was before the reporting committee on our side of the Congress for month after month since early this year. Should there be any hysteria or passion it rightfully comes from the millions of Americans who have become frustrated at the pace of the Congress that has let 20 months pass without enacting a law under which syndicated crime and its perpetrators can be dealt with firmly.

It is a privilege to compliment the ranking minority member of the committee, the gentleman from Ohio, upon his clear explanation of the contents of the bill. This bill establishes grand juries which can work independently to summon witnesses and compel them to talk by granting them immunity against use of their testimony against them. If they refuse to talk, they may be held in civil contempt. If they talk and do not speak the truth, they may be tried for perjury under modern rules of evidence which do not hobble the prosecution for perjury. If the witness talks and places his rights in jeopardy, the Government is authorized to protect him or even relocate him. The Government can, for the first time, take depositions from its witnesses and, if thereafter a witness should be kidnaped or killed, his damning testimony is already recorded and admissible.

This excellent bill makes large-scale gambling operations in violation of State law a Federal offense. It makes it unlawful to engage in racketeering activity as a means of acquiring, maintaining, or conducting a business.

Organized crime has contrived an endless chain of business fraud including fraudulent bankruptcies, usurious loans, gambling, and every other illicit trade from which a dollar may be extracted. Legitimate business is invaded by crime forces in order to acquire facades of respectability. This national disgrace must be stopped. The bill before the House will stop it. If my discharge petition was of any assistance to the final result, then the returns to be realized will be thousands of times the effort. If I have in any way contributed to quicker action on the long-delayed organized-crime bill, then our discharge petition has served a desirable, beneficial, and profitable purpose.

The CHAIRMAN. Under the rule, the committee amendment in the nature of a substitute now printed in the bill will be read by title as an original bill for the purpose of amendment.

The Clerk read as follows:

S. 30

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Organized Crime Control Act of 1970."

STATEMENT OF FINDINGS AND PURPOSE

The Congress finds that (1) organized crime in the United States is a highly sophisticated, diversified, and widespread activity that annually drains billions of dollars from America's economy by unlawful conduct and the illegal use of force, fraud, and corruption; (2) organized crime derives a major portion of its power through money obtained from such illegal endeavors as syndicated gambling, loan sharking, the theft and fencing of property, the importation and distribution of narcotics and other dangerous drugs, and other forms of social exploitation; (3) this money and power are increasingly used to infiltrate and corrupt legitimate business and labor unions and to subvert and corrupt our democratic processes; (4) organized crime activities in the United States weaken the stability of the Nation's economic system, harm innocent investors and competing organizations, interfere with free competition, seriously burden interstate and foreign commerce, threaten the domestic security, and undermine the general welfare of the Nation and its citizens; and (5) organized crime continues to grow because of defects in the evidence-gathering process of the law inhibiting the development of the legally admissible evidence necessary to bring criminal and other sanctions or remedies to bear on the unlawful activities of those engaged in organized crime and because the sanctions and remedies available to the Government are unnecessarily limited in scope and impact.

It is the purpose of this Act to seek the eradication of organized crime in the United States by strengthening the legal tools in the evidence-gathering process, by establishing new penal prohibitions, and by providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime.

The CHAIRMAN. The Clerk will read title I.

The Clerk read as follows:

TITLE I—SPECIAL GRAND JURY

SEC. 101. (a) Title 18, United States Code, is amended by adding immediately after chapter 215 the following new chapter:

"Chapter 216.—SPECIAL GRAND JURY

"Sec.
"3331. Summoning and term.
"3332. Powers and duties.
"3333. Reports.
"3334. General provisions.

"§ 3331. Summoning and term

"(a) In addition to such other grand juries as shall be called from time to time, each district court which is located in a judicial district containing more than four million inhabitants or in which the Attorney General, the Deputy Attorney General, or any

designated Assistant Attorney General, certifies in writing to the chief judge of the district that in his judgment a special grand jury is necessary because of criminal activity in the district shall order a special grand jury to be summoned at least once in each period of eighteen months unless another special grand jury is then serving. The grand jury shall serve for a term of eighteen months unless an order for its discharge is entered earlier by the court upon a determination of the grand jury by majority vote that its business has been completed. If, at the end of such term of any extension thereof, the district court determines the business of the grand jury has not been completed, the court may enter an order extending such term for an additional period of six months. No special grand jury term so extended shall exceed thirty-six months, except as provided in subsection (e) of section 3333 of this chapter.

"(b) If a district court within any judicial circuit fails to extend the term of a special grand jury or enters an order for the discharge of such grand jury before such grand jury determines that it has completed its business, the grand jury, upon the affirmative vote of a majority of its members, may apply to the chief judge of the circuit for an order for the continuance of the term of the grand jury. Upon the making of such an application by the grand jury, the term thereof shall continue until the entry upon such application by the chief judge of the circuit of an appropriate order. No special grand jury term so extended shall exceed thirty-six months, except as provided in subsection (e) of section 3333 of this chapter.

"§ 3332. Power and duties

"(a) It shall be the duty of each such grand jury impaneled within any judicial district to inquire into offenses against the criminal laws of the United States alleged to have been committed within that district. Such alleged offenses may be brought to the attention of the grand jury by the court or by any attorney appearing on behalf of the United States for the presentation of evidence. Any such attorney receiving information concerning such an alleged offense from any other person shall, if requested by such other person, inform the grand jury of such alleged offense, the identity of such other person, and such attorney's action or recommendation.

"(b) Whenever the district court determines that the volume of business of the special grand jury exceeds the capacity of the grand jury to discharge its obligations, the district court may order an additional special grand jury for that district to be impaneled.

"§ 3333. Reports

"(a) A special grand jury impaneled by any district court, with the concurrence of a majority of its members, may, upon completion of its original term, or each extension thereof, submit to the court a report—

"(1) concerning noncriminal misconduct, malfeasance, or misfeasance in office involving organized criminal activity by an appointed public officer or employee as the basis for a recommendation of removal or disciplinary action; or

"(2) regarding organized crime conditions in the district.

"(b) The court to which such report is submitted shall examine it and the minutes of the special grand jury and, except as otherwise provided in subsections (c) and (d) of this section, shall make an order accepting and filing such report as a public record only if the court is satisfied that it complies with the provisions of subsection (a) of this section and that—

"(1) the report is based upon facts revealed in the course of an investigation authorized by subsection (a) of section 3332 and is supported by the preponderance of the evidence; and

"(2) when the report is submitted pursuant to paragraph (1) of subsection (a) of this section, each person named therein and any reasonable number of witnesses in his behalf as designated by him to the foreman of the grand jury were afforded an opportunity to testify before the grand jury prior to the filing of such report, and when the report is submitted pursuant to paragraph (2) of subsection (a) of this section, it is not critical of an identified person.

"(c)(1) An order accepting a report pursuant to paragraph (1) of subsection (a) of this section and the report shall be sealed by the court and shall not be filed as a public record or be subject to subpena or otherwise made public (i) until at least thirty-one days after a copy of the order and report are served upon each public officer or employee named therein and an answer has been filed or the time for filing an answer has expired, or (ii) if an appeal is taken, until all rights of review of the public officer or employee named therein have expired or terminated in an order accepting the report. No order accepting a report pursuant to paragraph (1) of subsection (a) of this section shall be entered until thirty days after the delivery of such report to the public officer or body pursuant to paragraph (3) of subsection (c) of this section. The court may issue such orders as it shall deem appropriate to prevent unauthorized publication of a report. Unauthorized publication may be punished as contempt of the court.

"(2) Such public officer or employee may file with the clerk a verified answer to such a report not later than twenty days after service of the order and report upon him. Upon a showing of good cause, the court may grant such public officer or employee an extension of time within which to file such answer and may authorize such limited publication of the report as may be necessary to prepare such answer. Such an answer shall plainly and concisely state the facts and law constituting the defense of the public officer or employee to the charges in said report, and, except for those parts thereof which the court determines to have been inserted scandalously, prejudiciously, or unnecessarily, such answer shall become an appendix to the report.

"(3) Upon the expiration of the time set forth in paragraph (1) of subsection (c) of this section, the United States attorney shall deliver a true copy of such report, and the appendix, if any, for appropriate action to each public officer or body having jurisdiction, responsibility, or authority over each public officer or employee named in the report.

"(d) Upon the submission of a report pursuant to subsection (a) of this section, if the court finds that the filing of such report as a public record may prejudice fair consideration of a pending criminal matter, it shall order such report sealed and such report shall not be subjected to subpena or public inspection during the pendency of such criminal matter, except upon order of the court.

"(e) Whenever the court to which a report is submitted pursuant to paragraph (1) of subsection (a) of this section is not satisfied that the report complies with the provisions of subsection (b) of this section, it may direct that additional testimony be taken before the same grand jury, or it shall make an order sealing such report, and it shall not be filed as a public record or be subject to subpena or otherwise made public until the provisions of subsection (b) of this section are met. A special grand jury term may be extended by the district court beyond thirty-six months in order that such additional testimony may be taken or the provisions of subsection (b) of this section may be met.

"(f) As used in this section, 'public officer or employee' means officer or employee of the United States, any State, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any political subdivision, or any department, agency, or instrumentality thereof.

"§ 3334. General provisions

"The provisions of chapter 215, title 18, United States Code, and the Federal Rules of Criminal Procedure applicable to regular grand juries shall apply to special grand juries to the extent not inconsistent with sections 3331, 3332, or 3333 of this chapter."

(b) The part analysis of part II, title 18, United States Code, is amended by adding immediately after

"215. Grand Jury ..... 3321"

the following new item:

"216. Special Grand Jury..... 3331."

SEC. 102. (a) Subsection (a), section 3500 chapter 223, title 18, United States Code, is amended by striking "to an agent of the Government" following "the defendant".

(b) Subsection (d), section 3500, chapter 223, title 18, United States Code, is amended by striking "paragraph" following "the court under" and inserting in lieu thereof "subsection".

(c) Paragraph (1), subsection (e), section 3500, chapter 223, title 18, United States Code, is amended by striking the "or" following the semicolon.

(d) Paragraph (2), subsection (e), section 3500, chapter 223, title 18, United States Code, is amended by striking "to an agent of the Government" after "said witness" and by striking the period at the end thereof and inserting in lieu thereof: "; or (3) a statement, however taken or recorded, or a transcription thereof, if any, made by said witness to a grand jury.

Mr. CELLER (during the reading). Mr. Chairman, I ask unanimous consent that title I be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

Mr. GONZALEZ. Mr. Chairman, reserving the right to object, does the request mean we could offer amendments at any point?

Mr. CELLER. Yes.

The CHAIRMAN. To title I, as the Chair understands.

Mr. GONZALEZ. Title I will open for amendment.

The CHAIRMAN. Title I only.

Mr. GONZALEZ. I thank the Chair.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

AMENDMENT OFFERED BY MR. ECKHARDT

Mr. ECKHARDT. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. ECKHARDT: On page 79, strike lines 16 through 20 and insert in lieu thereof the following:

"(1) concerning misconduct, malfeasance, or misfeasance in office, whether or not itself criminal, involving organized criminal activity by a public officer or employee as the basis for a recommendation of removal, disciplinary action, or public response; or"

Mr. ECKHARDT. Mr. Chairman, the only substantial effect of this amendment is to restore the language in the bill as it came from the Senate with respect to one point. There was a change in the Senate language, so that under section

3333 the special grand jury would be limited only to the activities of nonelective officials. In the original form of the Senate bill as it came from the Senate all officials could be examined with respect to the noncriminal activities and a report could be made on such activities. That, I believe, is the only effective change of this section.

But I believe it is my duty also to point out to the Members that there is also a change of the language with respect to criminal activity. In the original language it was "concerning misconduct, malfeasance or misfeasance" and so forth, which is not criminal.

I think it is very necessary for that language to say, involving matters whether or not criminal, because otherwise this section would create a very artificial procedure in which a person could say "Because I engaged in a crime, you cannot make a report about me."

I think that is not the important thrust of this amendment. The important thing is this: The people that are in the forefront, in the front lines of fighting crime, are policemen. They are appointed officials. This special grand jury would permit you to investigate a policeman. You investigate him and you put out a report saying that the policeman did not make the proper raid on a gambling house. You can attack the deputy sheriff and say the same thing. You can say that he did not do anything with regard to usury or with regard to any other kind of crime that comes under this bill. Then he says, "But, oh, the fellow is elected and bosses me is the one who told me not to raid the gambling house or not to get involved in control of usury," because the politician, the boss, is the one actually getting the payoff. So the policeman has to take the rap. A report is made about the policeman, but when he tries to answer this report and this attack and he puts something in the report which may reflect, let us say, on the mayor or on the sheriff, then he is told by the judge, "This does not comport with the report that you are permitted to make, because this is scandalous or it is prejudicial or it is unnecessary." On page 81, line 22, although the policeman is permitted to answer, the judge determines whether or not the material is inserted scandalously, prejudiciously, or unnecessarily. Therefore the policeman's report may not be included because it might appear prejudicious to the judge. Well, I submit to you that if a policeman is to be investigated by a special grand jury, if he is to be attacked, the man who is underpaid and on the firing line in the war against crime, then the elected official ought to be subject to investigation, too, and ought to be on exactly the same footing as the policeman or the deputy sheriff.

I believe all public officers, including elected officials, should be included if anybody is to be included. I think no one who may be found to have engaged in misfeasance in office involving organized criminal activity should be immunized from this investigation if the policeman is not immunized from it, also. I do not think I ought to be able to assert immunity merely because I am an elected official if a policeman may not do so. I do not want any better treatment than the policeman that is really running the risk and is on the firing line and thus is most subject to attack from both criminals and those who wish to pillory the police on grounds that he has not done enough or that he has done too much. Besides that, the man elected, whether he be elected mayor, sheriff, or Congressman, has a stump from which to speak, but the police officer does not. A grand jury, with all of its tremendous facilities, gathers evidence and presents it in a report, and the newspapers run it. The police officer then has to go to the mayor and say, "look. I wish I had not done it." Or maybe he says, "I did not do it." The mayor says, "Well, you had better take the rap, because if you do not take the rap, it will fall on me."

Mr. CELLER. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, you must remember that this title I is rather a novel provision. It provides for unusual proceedings before a special grand jury. For that reason I believe we must go slowly and we must go carefully.

Mr. Chairman, I rise in opposition for a number of reasons.

The special grand jury provisions as reported by the committee represent a substantial retrenchment over the language of the bill as it passed the Senate. As it passed the Senate, title I would have authorized grand jury reports, presentments first, concerning noncriminal misconduct, malfeasance, or misfeasance of any public official or employee; second, exonerating a public official or employee who requested such a report; third, recomending legislative, executive, or administrative action, and fourth, regarding organized crime conditions in the district.

The committee amended title I to confine the special grand jury reports to organized crime conditions to the district and misconduct involving organized crinimal activities by appointed officials.

Mr. Chairman, the effect of the so-called Eckhardt amendment would be to grant implied power to grand juries to make recommendations for legislative, executive or administrative actions, because they could attack elected officials. They could attack the President of the United States. They could attack him because of his visit to Ireland. They could attack treaties. They could attack any legislative proposal. It would mean that the failure of this Congress to pass certain legislation, or having passed legislation which a particular special grand jury disliked could be subject to criticism.

It would also raise the danger that such reporting powers may be used to affect political campaigns. It would permit grand jury men, particularly ambitious foreman or deputy foreman of the grand jury to dabble in politics and affect elections. Such dangers were apparent to the commitee when it restricted the reporting powers of the special grand jury. But more important, and finally, it is altogether appropriate to restrict special grand jury reports to appointed officials inasmuch as title I contains machinery for the delievery of such reports for appropriate action to public officers or public bodies having jurisdiction, responsibility or authority over the appointed public officer or employee named in the report.

The CHAIRMAN. The time of the gentleman from New York has expired.

Mr. CELLER. Mr. Chairman, I ask unanimous consent to proceed for 1 additional minute.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

Mr. HALL. Mr. Chairman, I object.

The CHAIRMAN. Objection is heard.

Mr. YATES. Mr. Chairman, I did not object.

The CHAIRMAN. The Chair will state that the gentleman from New York requested 1 additional minute, and the gentleman from Missouri (Mr. HALL) objected to the request.

Mr. YATES. Mr. Chairman, I move to strike the last word.

(Mr. YATES asked and was given permission to revise and extend his remarks.)

Mr. YATES. Mr. Chairman, I will yield to the gentleman from New York (Mr. CELLER) so that he may complete his statement.

Mr. CELLER. Mr. Chairman, I thank the gentleman very much for yielding me this time. I would continue by referring you to page 82, lines 1 through 15, which provides—

> The United States atorney shall deliver a true copy of such report, and the appendix, if any, for appropriate action to each public officer or body having jurisdiction, responsibility, or authority over each public officer or employee named in the report.

Now, it would be inconsistent with that language to permit elected officials to be the subject of special grand jury report.

Mr. YATES. Mr. Chairman, I would like to ask the gentleman a question.

Mr. CELLER. Certainly.

Mr. YATES. Suppose the investigation of the grand jury were to lead to elected officials, under this particular provision such elected officials could not be made the subject——

Mr. CELLER. The entire operation of the special grand jury is placed under the jurisdiction of the district court, and the district court may raise questions as to whether or not a presentment covering and referring to elected officials was proper.

Mr. YATES. But the provision is seeking to curb corruption and crime, certainly elected officials have been known to be guilty of crimes, as well as appointed officials. I do not see why the distinction is drawn in this provision between the two.

Mr. CELLER. If they are indictable, any appointed or elected official would be reached by the grand jury. Nevertheless, this does not give the grand jury the right to roam around, to offer criticisms in "reports" to the conduct of elected officials.

Mr. YATES. But it does as far as appointed officials, and it does make that distinction, which I think is totally unreasonable.

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield?

Mr. YATES. I yield to the gentleman from Texas.

Mr. ECKHARDT. Mr. Chairman, I would like to point out that I would agree with the chairman that the amendment does not now permit the grand jury to roam around, nor with my amendment would it permit the grand jury to roam around. It would only permit the grand jury to investigate misconduct, malfeasance, or misfeasance in office of persons involved in organized criminal activity, and I have simply drawn it to apply to any public officer instead of just a nonelective officer. The chairman thought that this could permit roaming around to even the President of the United States. I would not imagine it would, because I would not imagine he was in any way engaged in any malfeasance involving organized criminal activities. Nor would any Member of this House that I know of be so involved, but if he were—if he were—he should subject himself to exactly the same scrutiny that he asks that our policemen be subjected to.

Mr. YATES. Suppose we have a sheriff, who is ordinarily an elected official, who may be guilty of engaging in some sort of organized criminal activities. Under this provision that sheriff would be exempt under this section, would he not?

Mr. ECKHARDT. If the gentleman will yield further, I would say that in all candor during the period of prohibition I would suspect that a substantial number of sheriffs were supported by bootleggers in their elections, if the sheriff's deputy could be investigated had this law been in effect at that time, why should not the sheriff?

Mr. POFF. Mr. Chairman, I move to strike out the last word.

Mr. Chairman, I join the distinguished chairman of the Committee on the Judiciary in opposition to the amendment.

In addition to the reasons that he has stated so eloquently, I would like, if I may, to make a point which I believe justifies the change that was made in this language in the Committee on the Judiciary.

A purpose, I suggest, and an altogether worthy purpose in confining the reach of title I to appointed officials, was to protect further the grant of power to a grand jury from attack on the grounds that it might violate the due process clause of the Constitution.

Some have criticized this provision as it was written in the Senate bill, as granting a special grand jury, in effect, the power to indict without according the identified individual the opportunity for vindication.

The phrase "as the basis for a recommendation of removal, disciplinary action" simply did not make sense. It was not relevant when applied to the case of elected officials such as mayors and governors.

To whom would that recommendation be delivered—those people who had authority to remove or discipline such an official?

If no such power to remove or discipline exists, a special grand jury is yet authorized to issue a report.

The answer to this question became evident when the reporting power is limited to appointed officials and employees. Then the report can properly be viewed as a recommendation to the appointing agency to remove or discipline. The identified individual thus has further recourse to make or present his case anew to the appointing agency, and then he will have an opportunity to vindicate his position. The analogy to indictment without trial is, of course, no longer valid.

With reference to the language of the amendment offered by the gentleman from Texas, I am sure the gentleman's purpose is altogether praiseworthy. But I am afraid his language works a mischief that he does not anticipate when he changes both the language of the committee bill and the language of the Senate bill by including the words "whether or not itself criminal."

The gentleman explained his purpose a moment ago. But I ask him, considering the fact that a special grand jury created under Title I like a regular grand jury has the power not only to report but to indict and it would be inappropriate in the extreme for a jury assembled to make a report charging criminal conduct and fail to indict.

Mr. ECKHARDT. Will the gentleman support my amendment if I merely strike the word "appointed"?

I thought I was improving your bill. But, if not, I would gladly ask unanimous consent simply to use the existing language and striking that term.

Would the gentleman then support the amendment?

Mr. POFF. May I inquire of the gentleman—and before I can answer the gentleman's question, I will have to ask him another question.

Will the gentleman make all of the other changes necessary to make the language comport with the language of the Senate version?

I see that the gentleman has added at the foot of his amendment the words "public response"—language which does not appear in the Senate version or the committee version. In this context, perhaps it is a little obscure.

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield further?

Mr. POFF. I yield to the gentleman.

Mr. ECKHARDT. I would assume that the public response would be response by the bosses of the elected officials, that is, the electorate. Just as the response with respect to misconduct of a policeman would be that of the police chief or of the mayor.

Mr. POFF. The gentleman is aware that an elected official, of course, is always subject to the discipline of the electorate, whether that is included in the statute or not.

It would seem in the syntax in which it is put here that the gentleman's purpose would be to encourage a special grand jury to investigate the elected official with the purpose in mind of publishing a report prior to an election which was intended to have an adverse impact upon the candidate's chances in that election.

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield?

Mr. POFF. I yield to the gentleman from Texas.

Mr. ECKHARDT. Does the gentleman feel that the elected official is better or worse equipped to answer such a report than the policeman, who has no platform to speak from, and who simply was confronted with an official report saying that he is corrupt, that he is connected with an illegal operation, when in fact he says he is not engaged in an illegal operation. He cannot go to court. He has nothing to defend. He just goes to his boss and says, "I hope you won't press it."

Mr. KOCH. Mr. Chairman, I rise in support of the Eckhardt amendment.

The CHAIRMAN. The gentleman from New York is recognized.

Mr. KOCH. Mr. Chairman, what distresses me is what conclusions the public will draw from the passage of this bill without the amendent. I think a likely conclusion by the public will be that they, meaning the Members of Congress, are willing to tell others what they shall do and what they shall be subject to, but that we the Congress, in our own protection and to protect every other public official, are not willing to be governed by the same restrictions. I agree with the distinguished gentleman from Texas (Mr. ECKHARDT) that it is hoped—that no Member of the Congress and no public official of any city, town, or State government will be connected with organized crime. But that is not realistic. We all know of a current situation in a sister State that borders New York where a jury has just convicted a high public official of a major city.

It seems to me that the Congress, like Caesar's wife, and every public official, again like Caesar's wife, ought to be above suspicion, and just by the very fact that we say, "No elected official will be covered by this section and that no elected official need worry about such a special grand jury presentment and that no public official need worry about explaining his conduct," I think that we then place in the mind of the public, perhaps not justified, but surely possible the suspicion that we are demanding that appointive officials shall be held to a higher standard of conduct than elected public officials. I think it is wrong to do that, or even to create the suspicion that we are doing so.

Mr. MIKVA. Mr. Chairman, will the gentleman yield?

Mr. KOCH. I am delighted to yield to the gentleman from Illinois.

Mr. MIKVA. I was struck by the comment of the gentleman from Virginia that this would be a very dangerous thing if applied to elected officials, because it could be used or abused to pillory somebody before an election. Would the gentleman from New York agree that this danger, if it exists, exists equally as to appointed officials as it does to elected officials?

Mr. KOCH. I surely do agree and as I pointed out it exists to an even greater extent, because almost anyone in public office has a forum. We and almost every other elected public official have a forum from which to speak. An elected official generally has a forum from which

to defend himself, whereas the appointed official often does not.

Mr. MIKVA. As I read the bill, for example, it would apply to a Federal judge, who is always fair game for criticism, but it would not apply to a Congressman. Certainly the Congressman has a better forum to defend himself than does a judge. The way we have phrased this, it would cover the judge and not the Congressman. I would suggest indeed that the gentleman from Texas (Mr. GONZALEZ) was right in the first place. Perhaps the real problem which this amendment points to is that once we let a grand jury start doing anything other than what is directly related to the criminal law, we get on some very shaky ground.

Mr. CELLER. Mr. Chairman, will the gentleman yield?

Mr. KOCH. I yield to the gentleman from New York, the chairman of the committee.

Mr. CELLER. Remember that this would be a 3-year grand jury. It may be extended beyond its initial 18-month term. It may live for 3 years. You must remember that a presentment, when published in a newspaper, is equivalent in the public mind to an indictment, and it has a very, very deleterious effect upon the man whose name is mentioned. It is for that reason, because of the nature of the presentment and the dangers inherent therein, the committee felt it should go slowly on this matter.

Title I is an innovation and therefore we feel it should be limited. As we gain experience under this provision we can make those changes which appear warranted.

Mr. KOCH. There is no one in the House for whom I have a greater real affection than that which I have for the distinguished chairman of the Judiciary Committee, but I want to point out to my good friend that a man's reputation, whether he is an appointed official or a public official, is his most prized possession, and if we are going to subject appointed officials to the kind of review that is contemplated in this bill, then it seems to me we ought to worry about what will happen to him and his reputation and his family, just as there are those who are worried and concerned about the reputation of elected officials. Indeed, I say greater protection ought to be given to those who serve in lesser position of public trust than those of us who serve in the highest positions of public service, mainly elected public office, because we have more to respond for.

(Mr. KOCH asked and was given permission to revise and extend his remarks.)

Mr. CONYERS. Mr. Chairman, I move to strike the requisite number of words, and rise in support of the amendment offered by the gentleman from Texas (Mr. ECKHARDT).

Mr. Chairman, it seems to me the distinction between elected and appointed officials being subject to this provision in title I may properly be thought to create a double standard. For example, what of the elected judge who might be exempted from this provision without the Eckhardt amendment, as opposed to the appointed Federal judge who could be subjected to this amendment in its present form? I think this distinction has been made very clearly by those who support the amendment, that there is no difference between the harm that might befall the elected official caught under the provisions of this amendment and that which would befall an appointed official. I would say personally to many Members here this provision in its entirety is obnoxious. I find that in the public mind the accusations that would emanate by report from a grand jury examining any such charges would be extremely harmful and difficult to rebut.

But if we must have this provision, I support the gentleman from Texas (Mr. ECKHARDT) who feels is should apply in fairness to all officials whether they be publicly elected or appointed. A police officer is in far less position to defend himself than is an elected official, including Members from this body who should be subject to the same standards. Therefore, I urge that the Eckhardt amendment, which conforms to the Senate version of the bill, be restored to the bill and that we affirmatively support the amendment now under discussion.

(Mr. CONYERS asked and was given permission to revise and extend his remarks.)

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas (Mr. ECKHARDT).

The amendment was rejected.

AMENDMENT OFFERED BY MR. GONZALEZ

Mr. GONZALEZ. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. GONZALEZ: Strike title I beginning on page 77.

PARLIAMENTARY INQUIRY

Mr. ECKHARDT. Mr. Chairman, I have a parliamentary inquiry. I have an amendment which is a perfecting amendment to title I. I would like to offer it if it takes precedence over the motion to strike, because I should not want to lose the opportunity to offer the amendment. This is a perfecting amendment to title I, and the gentleman in the well has offered an amendment to strike. My parliamentary question is: Would my amendment take precedence in order of consideration over such an amendment and, if so, I should like to offer it.

The CHAIRMAN. The gentleman from Texas (Mr. ECKHARDT) can offer his amendment while the motion to strike out title I, offered by the gentleman from Texas (Mr. GONZALEZ) is pending.

Mr. ECKHARDT. Mr. Chairman, I would offer it now or at any proper point.

The CHAIRMAN. The amendment of the gentleman from Texas (Mr. ECKHARDT) would be voted upon prior to the vote on the motion to strike offered by the gentleman from Texas (Mr. GONZALEZ).

Mr. ECKHARDT. I thank the Chair.

The CHAIRMAN. The Chair recognizes the gentleman from Texas (Mr. GONZALEZ).

Mr. GONZALEZ. Mr. Chairman, this title I should be in effect stricken. In fact, the dialog we have listened to here in the last 10 minutes concerning the Eckhardt amendment and its undesirability graphically and dramatically illustrates why the whole concept envisioned in this title I is unsound, why it is an overcharged blunderbuss in what otherwise can very well be a much needed bit of legislation in a worthwhile attempt to control the tremendous extent of criminal activity in our country.

I look upon this section as being as near a restoration of the old English Star Chamber type of approach as we have ever had offered on the floor of the House, or perhaps even in the other body.

Members can talk all they want about how potentially this section as it is written would offer protection from an unwarranted attack on the eve of an election and so forth, for an elected official, and that that is why the House committee changed the Senate version, and all of that, but that is really immaterial. It is really a superfluous argument.

This would be setting up for the first time in the history of American jurisprudence some kind of a vague, amorphous thing called a special grand jury, which it is sought to surround with an aura of all the attributes historically associated with a grand jury, and yet not have a grand jury.

Members say they want to avoid fishing expeditions, that would have ulterior motives, but actually this is setting it up to do it anyway, really with very little safeguard or protection from unwarranted intrusion, on which the whole body of American jurisprudence has been built, to protect individual liberties.

Crime is bad. but we should not use that as a vehicle to encrust on the statutory provisions of our criminal law some vague provision that can very well cancel out the meritorious sections of this legislation.

Let me give an example. The very definition of a grand jury is that it shall be concentrated on the criminal activities, either projected or in process of being consummated in a given district. But this is going to set up what is defined as a special grand jury to look into noncriminal activities, and it does not define "organized crime," and yet it is still sought to invest this body with all the investigatory powers that are traditionally the equipment of a regular grand jury.

I see no need for this provision in order for us to implement and to carry out the intent of this Congress in a worthwhile enterprise, as I said, of curbing organized crime in America today. I consider the dangerous aspects of it far overbalance the need to have it in this legislation at this time.

Mr. RAILSBACK. Mr. Chairman, will the gentleman yield?

Mr. GONZALEZ. I am delighted to yield to the gentleman from Illinois.

Mr. RAILSBACK. I thank the gentleman for yielding.

Do I correctly understand the gentleman's amendment would include all of title I?

Mr. GONZALEZ. That is correct.

Mr. RAILSBACK. I wonder if the gentleman is aware that not only would he strike out the first purpose which relates to the noncriminal activity but also he

would strike out the second section, on page 79, which I believe is the primary thrust of title I and which relates to permitting a special grand jury to investigate and report regarding organized crime conditions in the District.

In other words, your motion would encompass not only that part which we just debated a few minutes ago about noncriminal misconduct and malconduct and so forth, but it would prevent us from investigating organized crime. Moreover, this refers to the noncriminal investigation.

Mr. GONZALEZ. There are two purposes.

Mr. RAILSBACK. Right.

Mr. GONZALEZ. The second one permits the special grand jury specifically to investigate and report on organized crime conditions in that district, but also extends to "noncriminal."

Mr. RAILSBACK. You do not need a special grand jury as defined in the preceding section to do it. They are doing it now when the need is right. Look. If the real trouble is, as I believe it is, that you have a willing and honest enforcement official and prosecution official and there is a hiatus in the law that does not permit him really to enforce it——

The CHAIRMAN. The time of the gentleman has expired.

Mr. GONZALEZ. Mr. Chairman, I ask unanimous consent to proceed for 1 additional minute.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

Mr. HALL. I object.

Mr. RAILSBACK. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I would be glad to yield to the gentleman from Texas if he wants any more time, but I would like to reply to something he said, too.

Mr. GONZALEZ. I thank the gentleman for yielding.

I just want to explain why I have this motion to strike title I in its entirety.

It is my belief that part of the big problem we have today is something this Congress cannot do anything about or anybody else. If you have a police officer who will not arrest or a district attorney who will not prosecute, there is nothing we can do about it. We are assuming when we pass this type of legislation that we do have district attorneys who are willing and disposed to prosecute and policemen who are willing to arrest. I am saying in that event we do not need this particular section. You have all of the power now with your regularly constituted grand jury.

Mr. RAILSBACK. Let me take issue with that, because I disagree with that statement. In other words, it is my belief—and it is also held by Senator McCLELLAN—that right now the Federal Government does not have the specific powers to investigate and report. They have the right to investigate and to indict.

The gentleman has also made a statement that this is a new authority and is something that has not been done in the United States. Specifically 21 States have legislation similar to the New York statute which in Jones against People was upheld and was construed to authorize reports and in addition six States explicitly authorize such reports by statute, and others sanction them on a common law basis.

I also want to say this. Here is what the district attorney of New York, Frank Hogan, who is certainly one of the top law enforcement people in the Nation said. He said:

Grand jury report powers, although a revival in our present federal system, have been retained from common law or statutorily enacted in several of our States. Twenty-one States have legislation similar to the New York statute which, in *Jones* v. *People*, 101 App. Div. 55, 92 N.Y. Supp. 275, *appeal dismissed*, 181 N.Y. 389, 74 N.E. 226 (1905), was construed to authorize reports, while six States explicitly authorize such reports by statute, and others have sanctioned them on a common law basis See, for example, *In Re Report of Grand Jury*, 11 So 2d 316 (Fla. 1945). The effectiveness of such reports as an instrument of reform was affirmed at our hearings by Frank S. Hogan, district attorney of New York County. Hearings at 353–54. Mr. Hogan set out several examples of grand jury reports, and evaluated these reports, as follows:

"Since 1947, some 20 reports have been submitted by various grand juries of New York County disclosing either the noncriminal misconduct of public officers or the existence of conditions in public agencies or areas of public interest which required corrective legislative or administrative action. I cite a few instances of the exercise of this grand jury power which, I believe, demonstrates its effectiveness."

Mr. GONZALEZ. Judging by the results in New York, I think it leaves a lot to be desired, and for that very reason I insist that the provision here for setting up this special creature which is defined here as a special grand jury with ambivalent powers and duties and scope of authority should be stricken.

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. RAILSBACK. Yes. I am glad to yield to the gentleman.

Mr. CONYERS. May I say to the gentleman that there presently exists no provision for a Federal grand jury now to either indict or fail to indict. There is no middle ground that enables them to issue random commentaries.

I think that is something that should be considered very carefully here. Crime in the District of Columbia, I submit, is a special matter and I question whether it is relevant in a national organized crime bill, because we can get at the crime in the District of Columbia through any number of Federal grand juries that are presently carrying on their activities.

Mr. RAILSBACK. Let me say to the gentleman that as far as the gentleman's statement is concerned, I see particular value in this special grand jury under the second section which relates to general organized crime activities. It focuses itself on a very serious problem. The thing I like about it is that this special grand jury, by and large, is very independent. It is independent in many respects of the Government, it is independent of many of the politicians, and in that respect it seems to me it is something vitally needed because we know that corruption unfortunately in many areas relates to organized crime which involves these very people.

Mr. YATES. Mr. Chairman, will the gentleman yield for a question?

Mr. RAILSBACK. I yield to the gentleman from Illinois.

Mr. YATES. Is there any intention on the part of the committee to have the section operate and apply to any kind of a crime other than organized crime?

Mr. RAILSBACK. My understanding is that by reason of an amendment that was introduced on the House side and in the committee that even in the case of the appointed public official it still should relate to an organized criminal activity.

Mr. YATES. And, the special grand jury could not be summoned and it would not relate under the terms of this provision to a criminal activity other than that which is commonly accepted as organized crime?

Mr. RAILSBACK. I think you have to differentiate between the other section dealing with the appointed public officials and the section that involves general organized crime conditions. But as I understand it, there would have to be allegations in any case that this involved organized crime or organized criminal activity. In my opinion that narrows it a great deal.

Mr. YATES. Mr. Chairman, if the gentleman will yield further, throughout this bill there is no reference to the phrase "organized crime" in any of its sections.

Mr. RAILSBACK. There certainly is in this title, if you want to restrict yourself to this title.

The CHAIRMAN. The time of the gentleman from Illinois has expired.

Mr. CONYERS. Mr. Chairman, I move to strike the requisite number of words.

(Mr. CONYERS asked and was given permission to revise and extend his remarks.)

Mr. CONYERS. Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, I think the title should be struck in its entirety.

I quote from a portion of the American Civil Liberties Unions' evaluation of the committee bill as it emanated from the Judiciary Committee:

An individual accused by such a grand jury has no real way to clear himself of the charge levied by this body which exists by the authority of the Government and which has secured its information by using compulsory testimony in secret proceedings. Although a person named in the report is given an opportunity to testify and present a "reasonable" number of witnesses, the value of that right is critically undercut because he cannot know the identity of his accuser, cannot compel the attendance of witnesses or cross-examine and cannot compel the production of documentary evidence.

Mr. Chairman, it seems to me if we have grand juries now constituted on a State level which can report and which can indict—we have Federal grand juries presently constituted throughout the Nation, including the District of Columbia which can indict—then why do we need to empanel Federal grand juries for the purpose of reporting conduct short of criminal activities?

That is really all this title does that is

different from the existing Federal law. We can now proceed against all the organized crime activity in this country through the existing grand jury apparatus that is now available both federally and at the State level.

What we are really saying here is that we now will be able to move against any conduct which falls short of criminally indictable activity, for example, malfeasance or misfeasance of office. What can a police officer do that is not criminal conduct but would nevertheless subject him to the provisions of title I? If he fails to file a report he is violating his own police rules, and the municipal police manual. If he is associating with underworld characters he is doubtless violating the local provisions that regulate their conduct. If he is indeed violating any State or Federal criminal activity he is subject to a grand jury, State, or Federal.

This provision I suggest in no way enables us to move more effectively against nonelected officials, who may be guilty of some conduct short of criminal activity. It will create a tremendous amount of confusion in the courts. It is going to be subject to misuse and abuse in which many good law enforcement people, not only police officers, but public officials as well, may be subject to harassment that might not have been intended by any of the Members who have supported the bill thus far.

I urge the support of the amendment, and I hope that title I may be stricken from this bill in a modest effort to make it at least consistent with respect to the existing systems of grand juries.

PERFECTING AMENDMENT OFFERED BY MR. ECKHARDT

Mr. ECKHARDT. Mr. Chairman, I offer a perfecting amendment.

The Clerk read as follows:

Amendment offered by Mr. ECKHARDT: On page 81, strike on line 21 the words "have been inserted scandal-", and strike all of lines 22 and 23, and insert in lieu thereof the following: "be not material to the assertions in the report and not material to a defense or explanation. No matter or assertion which has been inserted scandalously or prejudiciously shall be considered privileged matter solely upon the basis that it is a part of either the report or the appendix to the report in any action for liable or defamation."

Mr. ECKHARDT. Mr. Chairman, title I, as has been correctly pointed out by the gentleman from Michigan (Mr. CONYERS) really adds only two things: One, it permits reports by the grand jury, which cannot now be done. A Federal grand jury can only indict, or not indict. And, second, it permits investigation of noncriminal activities.

All of the provisions of section 3331, Summoning and Term, section 3332, Powers and Duties, are presently in existing Federal law. You have authority for a grand jury which may sit for 18 months—of course, this enlarges that. You presently have authority for a grand jury to investigate crime and indict, or no-bill, but you do not under present law, and you are adding under this bill, the language of section 3333, to permit a grand jury to comment on matters whether they are criminal or not. I have seen this happen at the State level. It is done now. It is pretty dangerous, too, because the public is not very discriminating between what is criminal and what is noncriminal so long as a grand jury is fooling around with it.

I want to point out to you that this amendment that I am offering at this time seeks to cure one of these flaws.

Under this section, the grand jury may report its opinion of noncriminal activities about the policeman. It cannot, of course, do the same in the case of the mayor.

It can report that, for instance, policeman Joe Blow has been soft on crime and that he has not raided any of the places that he was sent out to raid, and that he is the kind of guy who ought to be fired and he ought to report to the mayor and the mayor ought to fire him.

Then what is the newspaper going to do? It is either going to pillory the policeman or it is going to pillory the mayor. So the mayor fires the policeman to prevent the latter from happening.

Now note that this title does give the policeman the right to come in and make his answer to the report. If he makes his answer to the report in time it will be included as an appendix to the report.

But let me point out the trouble with this. It says:

Such an answer shall plainly and concisely state the facts and law constituting the defense of the public officer * * *

I think you, as politicians, all know what you get into when you answer your opponent's attacks—you repeat them and perhaps emphasize them.

To continue reading what the bill says:

or employee to the charges in said report, and, except for those parts thereof which the court determines to have been inserted scandalously, prejudiciously, or unnecessarily, such answer shall become an appendix to the report.

Thus, the policeman has been attacked. He says, "I did not raid the gambling houses because the mayor told me not to. The mayor is involved in this operation and takes a payoff. I am talking of an entirely hypothetical situation, of course.

Such a statement hurts the mayor. It is certainly prejudicial to him. I suppose it may be "prejudiciously" stated in the view of the judge. The judge can then strike that out of the report—and the police officer does not get his answer in. I do not think that is fair.

So what I seek to do by this amendment is simply to change this result by providing that the sentence read, "such an answer shall plainly and concisely state the facts and law constituting the defense of the public officer or employee to the charges in said report, and, except for those parts thereof which the court determines to be not material to the assertions in the report and not material to a defense or explanation, such answer shall become an appendix to the report."

In other words, any statement that the police officer makes is going to be prejudicial to the person who is charging him. I do not think you should strike it out merely for that reason. He ought to have his say, too.

Then I provide, in order to protect both the police officer and the mayor from attack by the grand jury, that is really unfair—that is really scurrilous—I put in that no matter or assertion which has been inserted scandalously or prejudiciously shall be considered privileged matter solely upon the basis that it is part of either the report or the appendix to the report.

Mr. RODINO. Mr. Chairman, I rise in opposition to the amendment.

(Mr. RODINO asked and was given permission to revise and extend his remarks.)

Mr. RODINO. Mr. Chairman, although I seem to recognize what the gentleman may be striving to achieve here, nonetheless I think it might be stated that the language as written in this particular section clearly gives the court adequate discretion to determine whether or not matters have been inserted scandalously or prejudiciously or unnecessarily. It provides authority to the court to strike that kind of language.

The gentleman from Texas, however, would limit the authority of the court to delete only immaterial matter.

Thus it would permit the insertion of scandalous or prejudicial matter in an answer.

I think that this kind of provision which is highly technical should not be written on the floor of the House. I believe the bill clearly sets out what the court's authority is to delete matter. It should not be disturbed. For this reason, Mr. Chairman, I suggest the amendment be defeated.

Mr. MIKVA. Mr. Chairman, I rise in support of the amendment.

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield?

Mr. MIKVA. I yield to the gentleman from Texas.

Mr. ECKHARDT. I want to clear this point up, because I do not believe the committee necessarily disagrees with me on this point. I also wish to clear up the proposition that if my amendment is adopted, you would still get a vote on whether or not to strike all of title I. The nature of this amendment is to perfect. It is a perfecting amendment. I understand that this bill presently only permits the judge to strike out scandalous or prejudicious language in the answer of the police officer. It does not give the judge the right to strike out scandalous and prejudicious language in the report which is made against the police officer.

I should like to ask the gentleman from New Jersey (Mr. RODINO) if that is the way he understands it.

Mr. RODINO. I believe the court is given the authority to review the answer in the context in which we have stated, whether or not it is scandalous, prejudicial, or unnecessary.

Mr. ECKHARDT. The point is the judge does not have the power to review the report. He does not have the power to strike scandalous or prejudicious language of the report against the police officer.

Mr. POFF. Mr. Chairman, will the gentleman yield?

Mr. MIKVA. I yield to the gentleman from Virginia.

Mr. POFF. The report does not become public, indeed is not accepted, until it has survived an appellate procedure.

Mr. ECKHARDT. Will the gentleman yield to me at that point?

Mr. POFF. The gentleman from Illinois has the floor, but I would like to complete my statement, if I may.

Mr. MIKVA. I would appreciate the gentleman's concluding his statement as quickly as he can so there will be time for debate in support of the amendment.

Mr. POFF. I defer to the gentleman from Texas.

Mr. ECKHARDT. The point I am making here is that, it seems to me, there should be nothing scandalous in the report, and the same rule should apply to both the initial report and the answer. If you let the judge strike a part of the answer but not a part of the report, you are not treating the report and the answer equally. I am not saying the report should be censored by the judge but neither should the answer, but everyone who inserts scandalous material should be answerable in a libel suit. That is all I am talking about.

Mr. POFF. That is precisely the point.

The CHAIRMAN. Does the gentleman from Illinois yield to the gentleman from Virginia?

Mr. MIKVA. I yield to the gentleman from Virginia.

Mr. POFF. I thank the gentleman. That is precisely what I was about to say. The court does in the appellate process have the power to suppress publication of the entire report if the court finds it to be unjustified.

Mr. CONYERS. Mr. Chairman, I rise in support of the amendment.

Mr. HALL. Mr. Chairman, a point of order.

The CHAIRMAN. The gentleman will state it.

Mr. HALL. Has the gentleman from Michigan not already been recognized in support of this amendment?

The CHAIRMAN. Has the gentleman previously been recognized in support of the Eckhardt amendment?

Mr. CONYERS. No, Mr. Chairman.

The CHAIRMAN. The gentleman from Michigan is recognized.

(Mr. CONYERS asked and was given permission to revise and extend his remarks.)

Mr. CONYERS. Mr. Chairman, may I point out that this notion of having the report suppressed until appellate review takes place is just a little bit inconsistent with what happens in real life when a grand jury undertakes an investigation in any city of this country that I know about.

That is to say it is extremely difficult to keep a total secret the names of persons called by a grand jury and the nature of the testimony until after an appellate review has taken place.

If there is such an instance in American jurisprudence, I would be delighted to be advised of it and I would be inclined to change my opinion about this part of this bill. But the facts of the matter are that in the day-to-day exigencies, the press does find out that a grand jury is indeed meeting in the local Federal building, and that, in fact, the accused, as opposed to the elected official for whom he may be working, is the subject of an inquiry into activities that may, although short of criminal activity, might constitute malfeasance or nonfeasance in office. To assume that we can rest assured that the defendant in this grand jury proceeding is safe from any detrimental news leaks until the appellate review would be made—and incidentally, I would presume that would be at his own expense—is a little far afield of the realities of the manner in which grand juries operate.

The CHAIRMAN. The question is on the perfecting amendment offered by the gentleman from Texas (Mr. ECKHARDT).

The question was taken; and on a division (demanded by Mr. ECKHARDT) there were—ayes 24, noes 44.

So the amendment was rejected.

The CHAIRMAN. The question now is on the amendment offered by the gentleman from Texas (Mr. GONZALEZ).

The amendment was rejected.

The CHAIRMAN. If there are no further amendments to title I, the Clerk will read.

The Clerk read as follows:

TITLE II—GENERAL IMMUNITY

SEC. 201. (a) Title 18, United States Code, is amended by adding immediately after part IV the following new part:

"PART V.—IMMUNITY OF WITNESSES

"Sec.
"6001. Definitions.
"6002. Immunity generally.
"6003. Court and grand jury proceedings.
"6004. Certain administrative proceedings.
"6005. Congressional proceedings.

"§ 6001. Definitions

"As used in this part—

"(1) 'agency of the United States' means any executive department as defined in section 101 of title 5, United States Code, a military department as defined in section 102 of title 5, United States Code, the Atomic Energy Commission, the China Trade Act registrar appointed under 53 Stat. 1432 (15 U.S.C. sec. 143), the Civil Aeronautics Board, the Federal communications Commission, the Federal Deposit Insurance Corporation, the Federal Maritime Commission, the Federal Power Commission, the Federal Trade Commission, the Interstate Commerce Commission, the National Labor Relations Board, the National Transportation Safety Board, the Railroad Retirement Board, an arbitration board established under 48 Stat. 1193 (45 U.S.C. sec. 157), the Securities and Exchange Commission, the Subversive Activities Control Board, or a board established under 49 Stat. 31 (15 U.S.C. sec. 715d);

"(2) 'other information' includes any book, paper, document, record, recording, or other material;

"(3) 'proceeding before an agency of the United States' means any proceeding before such an agency with respect to which it is authorized to issue subpenas and to take testimony or receive other information from witnesses under oath; and

"(4) 'court of the United States' means any of the following courts: the Supreme Court of the United States, a United States court of appeals, a United States district court established under chapter 5, title 28, United States Code, the District of Columbia Court of Appeals, the Superior Court of the District of Columbia, the District Court of Guam, the District Court of the Virgin Islands, the United States Court of Claims, the United States Court of Customs and Patent Appeals, the Tax Court of the United States, the Customs Court, and the Court of Military Appeals.

"§ 6002. Immunity generally

"Whenever a witness refuses, on the basis of his privilege against self-incrimination, to testify or provide other information in a proceeding before or ancillary to—

"(1) a court or grand jury of the United States,

"(2) an agency of the United States, or

"(3) either House of Congress, a joint committee of the two Houses, or a committee or a subcommittee of either House,

and the person presiding over the proceeding communicates to the witness an order issued under this part, the witness may not refuse to comply with the order on the basis of his privilege against self-incrimination; but no testimony or other information compelled under the order (or any information directly or indirectly derived from such testimony or other information) may be used against the witness in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

"§ 6003. Court and grand jury proceedings

"(a) In the case of any individual who has been or may be called to testify or provide other information at any proceeding before or ancillary to a court of the United States or a grand jury of the United States, the United States district court for the judicial district in which the proceeding is or may be held shall issue, in accordance with subsection (b) of this section, upon the request of the United States attorney for such district, an order requiring such individual to give testimony or provide other information which he refuses to give or provide on the basis of his privilege against self-incrimination, such order to become effective as provided in section 6002 of this part.

"(b) A United States attorney may, with the approval of the Attorney General, the Deputy Attorney General, or any designated Assistant Attorney General, request an order under subsection (a) of this section when in his judgment—

"(1) the testimony or other information from such individual may be necessary to the public interest; and

"(2) such individual has refused or is likely to refuse to testify or provide other information on the basis of his privilege against self-incrimination.

"§ 6004. Certain administrative proceedings

"(a) In the case of any individual who has been or who may be called to testify or provide other information at any proceeding before an agency of the United States, the agency may, with the approval of the Attorney General, issue, in accordance with subsection (b) of this section, an order requiring the individual to give testimony or provide other information which he refuses to give or provide on the basis of his privilege against self-incrimination, such order to become effective as provided in section 6002 of this part.

"(b) An agency of the United States may issue an order under subsection (a) of this section only if in its judgment—

"(1) the testimony or other information from such individual may be necessary to the public interest; and

"(2) such individual has refused or is likely to refuse or provide other information on the basis of his privilege against self-incrimination.

"§ 6005. Congressional proceedings

"(a) In the case of any individual who has been or may be called to testify or provide other information at any proceeding before either House of Congress, or any committee, or any subcommittee of either House, or any

joint committee of the two Houses, a United States district court shall issue, in accordance with subsection (b) of this section, upon the request of a duly authorized representative of the House of Congress or the committee concerned, an order requiring such individual to give testimony or provide other information which he refuses to give or provide on the basis of his privilege against self-incrimination, such order to become effective as provided in section 6002 of this part.

"(b) Before issuing an order under subsection (a) of this section, a United States district court shall find that—

"(1) in the case of a proceeding before either House of Congress, the request for such an order has been approved by an affirmative vote of a majority of the Members present of that House;

"(2) in the case of a proceeding before a committee or a subcommittee of either House of Congress or a joint committee of both Houses, the request for such an order has been approved by an affirmative vote of two-thirds of the members of the full committee; and

"(3) ten days or more prior to the day on which the request for such an order was made, the Attorney General was served with notice of an intention to request the order.

"(c) Upon application of the Attorney General, the United States district court shall defer the issuance of any order under subsection (a) of this section for such period, not longer than twenty days from the date of the request for such order, as the Attorney General may specify."

(b) The table of parts for title 18, United States Code, is amended by adding at the end thereof the following:

"V. Immunity of Witnesses---------- 6001".

SEC. 202. The third sentence of paragraph (b) of section 6 of the Commodity Exchange Act (69 Stat. 160; 7 U.S.C. 15) is amended by striking "49 U.S.C. 12, 46, 47, 48, relating to the attendance and testimony of witnesses, the production of documentary evidence, and the immunity of witnesses" and by inserting in lieu thereof the following: "(49 U.S.C. § 12), relating to the attendance and testimony of witnesses and the production of documentary evidence,".

SEC. 203. Subsection (f) of section 17 of the United States Grain Standards Act (82 Stat. 768; 7 U.S.C. § 87f(f)), is repealed.

SEC. 204. The second sentence of section 5 of the Act entitled "An Act to regulate the marketing of economic poisons and devices, and for other purposes", approved June 25, 1947 (61 Stat. 168; 7 U.S.C. § 135c), is amended by inserting after "section", the following language: ", or any evidence which is directly or indirectly derived from such evidence,".

SEC. 205. Subsection (f) of section 13 of the Perishable Agricultural Commodities Act, 1930 (46 Stat. 536; 7 U.S.C. § 499m(f)), is repealed.

SEC. 206. (a) Section 16 of the Cotton Research and Promotion Act (80 Stat. 285; 7 U.S.C. § 2115) is amended by striking "(a)" and by striking subsection (b).

(b) The section heading for such section 16 is amended by striking ": Self-Incrimination".

SEC. 207. Clause (10) of subsection (a) of section 7 of the Act entitled "An Act to establish a uniform system of bankruptcy throughout the United States", approved July 1, 1898 (52 Stat. 847; 11 U.S.C. § 25(a)(10)), is amended by inserting after the first use of the term "testimony" the following language: ", or any evidence which is directly or indirectly derived from such testimony,".

SEC. 208. The fourth sentence of subsection (d) of section 10 of the Federal Deposit Insurance Act (64 Stat. 882; 12 U.S.C. § 1820(d)), is repealed.

SEC. 209. The seventh paragraph under the center heading "DEPARTMENT OF JUSTICE" in the first section of the Act of February 25, 1903 (32 Stat. 904; 15 U.S.C. § 32), is amended by striking ": *Provided*, That" and all that follows in that paragraph and inserting in lieu thereof a period.

SEC. 210. The Act of June 30, 1906 (34 Stat. 798; 15 U.S.C. § 33), is repealed.

SEC. 211. The seventh paragraph of section 9 of the Federal Trade Commission Act (38 Stat. 722; 15 U.S.C. § 49), is repealed.

SEC. 212. Subsection (d) of section 21 of the Securities Exchange Act of 1934 (48 Stat. 899; 15 U.S.C. § 78u(d)), is repealed.

SEC. 213. Subsection (c) of section 22 of the Securities Act of 1933 (48 Stat. 86; 15 U.S.C. § 77v(c)), is repealed.

SEC. 214. Subsection (e) of section 18 of the Public Utility Holding Company Act of 1935 (49 Stat. 831; 15 U.S.C. § 79r(e)), is repealed.

SEC. 215. Subsection (d) of section 42 of the Investment Company Act of 1940 (54 Stat. 842; 15 U.S.C. § 80a-41(d)), is repealed.

SEC. 216. Subsection (d) of section 209 of the Investment Advisers Act of 1940 (54 Stat. 853; 15 U.S.C. § 80b-9(d)), is repealed.

SEC. 217. Subsection (c) of section 15 of the China Trade Act, 1922 (42 Stat. 953; 15 U.S.C. § 155(c)), is repealed.

SEC. 218. Subsection (h) of section 14 of the Natural Gas Act (52 Stat. 828; 15 U.S.C. § 717m(h)), is repealed.

SEC. 219. The first proviso of section 12 of the Act entitled "An Act to regulate the interstate distribution and sale of packages of hazardous substances intended or suitable for household use," approved July 12, 1960 (74 Stat. 379; 15 U.S.C. § 1271), is amended by inserting after "section" the following language: ", or any evidence which is directly or indirectly derived from such evidence,".

SEC. 220. Subsection (e) of section 1415 of the Interstate Land Sales Full Disclosure Act (82 Stat. 596; 15 U.S.C. §1714(e)), is repealed.

SEC. 221. Subsection (g) of section 307 of the Federal Power Act (49 Stat. 856; 16 U.S.C. § 825f(g)), is repealed.

SEC. 222. Subsection (b) of section 835 of title 18, United States Code, is amended by striking the third sentence thereof.

SEC. 223. (a) Section 895 of title 18, United States Code, is repealed.

(b) The table of sections of chapter 42 of such title is amended by striking the item relating to section 895.

SEC. 224. (a) Section 1406 of title 18, United States Code, is repealed.

(b) The table of sections of chapter 68 of such title is amended by striking the item relating to section 1406.

SEC. 225. Section 1954 of title 18, United States Code, is amended by striking "(a) Whoever" and inserting in lieu thereof "Whoever" and by striking subsection (b) thereof.

SEC. 226. The second sentence of subsection (b), section 2424, title 18, United States Code, is amended by striking "but no person" and all that follows in that subsection and inserting in lieu thereof: "but no information contained in the statement or any evidence which is directly or indirectly derived from such information may be used against any person making such statement in any criminal case, except a prosecution for perjury, giving a false statement or otherwise failing to comply with this section."

SEC. 227. (a) Section 2514 of title 18 United States Code, is repealed effective four years after the effective date of this Act.

(b) The table of sections of chapter 119 of such title is amended by striking the item relating to section 2514.

SEC. 228. (a) Section 3486 of title 18, United States Code, is repealed.

(b) The table of sections of chapter 223 of such title is amended by striking the item relating to section 3486.

SEC. 229. Subsection (e) of section 333 of the Tariff Act of 1930 (46 Stat. 699; 19 U.S.C. § 1333(e)), is amended by striking ": Provided That" and all that follows in that subsection and inserting in lieu thereof a period.

SEC. 230. The first proviso of section 703 of the Federal Food, Drug, and Cosmetic Act, approved June 25, 1938 (52 Stat. 1057; 21 U.S.C. § 373), is amended by inserting after "section" the folowing language: ", or any evidence which is directly or indirectly derived from such evidence,".

SEC. 231. (a) Section 4874 of the Internal Revenue Code of 1954 is repealed.

(b) The table of sections of part III of subchapter (D) of chapter 39 of such Code is amended by striking the item relating to section 4874.

SEC. 232. Section 7493 of the Internal Revenue Code of 1954 is repealed.

SEC. 233. The table of sections of part III of subchapter (E)) of chapter 76 of the Internal Revenue Code of 1954 is amended by striking the item relating to section 7493.

S53. 234. Paragraph (3) of section 11 of the Labor Management Relations Act, 1947 (49 Stat. 455; 29 U.S.C. § 161(3)), is repealed.

SEC. 235. The third sentence of section 4 of the Act entitled "An Act to provide that tolls on certain bridges over navigable waters of the United States shall be just and reasonable, and for other purposes", approved August 31, 1935 (49 Stat. 671; 33 U.S.C. § 506), is repealed.

SEC. 236. Subsection (f) of section 205 of the Social Security Act (42 U.S.C. § 405(f)) is repealed.

SEC. 237. Paragraph c of section 161 of the Atomic Energy Act of 1954 (68 Stat. 948; 42 U.S.C. § 2201(c)), is amended by striking the third sentence thereof.

SEC. 238. The last sentence of the first paragraph of subparagraph (h) of the paragraph designated "Third" of section 7 of the Railway Labor Act (44 Stat. 582; 45 U.S.C. § 157), is repealed.

SEC. 239. Subsection (c) of section 12 of the Railroad Unemployment Insurance Act (52 Stat. 1107; 45 U.S.C. § 362(c)), is repealed.

SEC. 240. Section 28 of the Shipping Act of 1916 (39 Stat. 737; 46 U.S.C. § 827), is repealed.

SEC. 241. Subsection (c) of section 214 of the Merchant Marine Act, 1936 (49 Stat. 1991; 46 U.S.C. § 1124(c)), is repealed.

SEC. 242. Subsection (i) of section 409 of the Communications Act of 1934 (48 Stat. 1096; 47 U.S.C. § 409(1)), is repealed.

SEC. 243. (a) The second sentence of section 9 of the Interstate Commerce Act (24 Stat. 382; 49 U.S.C. § 9), is amended by striking "; the claim" and all that follows in that sentence and inserting in lieu thereof a period.

(b) Subsection (a) of section 316 of the Interstate Commerce Act (54 Stat. 946; 49 U.S.C. § 916(a)), is amended by striking the comma following "part I" and by striking ", and the Immunity of Witnesses Act (34 Stat. 798; 32 Stat. 904, ch. 755, sec. 1),".

(c) Subsection (a) of section 417 of the Interstate Commerce Act (49 U.S.C. § 1017(a)), is amended by striking the comma after "such provisions" and by striking ", and of the Immunity of Witnesses Act (34 Stat. 798; 32 Stat. 904, ch. 755, sec. 1),".

SEC. 244. The third sentence of section 3 of the Act entitled "An Act to further regulate Commerce with foreign nations and among the States", approved February 19, 1903 (32 Stat. 848; 49 U.S.C. § 43), is amended by striking "; the claim" and all that follows in that sentence down through and including "*Provided*, That the provisions" and inserting in lieu thereof ". The provisions".

SEC. 245. The first paragraph of the Act of

February 11, 1893 (27 Stat. 443; 49 U.S.C. § 46), is repealed.

SEC. 246. Subsection (i) of section 1004 of the Federal Aviation Act of 1958 (72 Stat. 792; 49 U.S.C. § 1484(i)), is repealed.

SEC. 247. The ninth sentence of subsection (c) of section 13 of the Internal Security Act of 1950 (81 Stat. 768; 50 U.S.C. § 792(c)), is repealed.

SEC. 248. Section 1302 of the Second War Powers Act of 1942 (56 Stat. 185; 50 U.S.C. App. § 643a), is amended by striking the fourth sentence thereof.

SEC. 249. Paragraph (4) of subsection (a) of section 2 of the Act entitled "An Act to expedite national defense, and for other purposes", approved June 28, 1940 (54 Stat. 676; 50 U.S.C. App. § 1152(a)(4)), is amended by striking the fourth sentence thereof.

SEC. 250. Subsection (d) of section 6 of the Export Control Act of 1949 (63 Stat 8; 50 U.S.C. App. § 2026(b)), is repealed.

SEC. 251. Subsection (b) of section 705 of the Act of September 8, 1950, to amend the Tariff Act of 1930 (64 Stat. 816; 50 U.S.C. § 2155(b)), is repealed.

SEC. 252. Section 23–545 of the District of Columbia Code is repealed.

SEC. 253. Section 42 of the Act of October 9, 1940, 54 Stat. 1082 (D.C. Code, sec. 35–1346), is repealed.

SEC. 254. Section 2 of the Act of June 19, 1934, 48 Stat. 1176 (section 35–802, District of Columbia Code), is repealed.

SEC. 255. Section 29 of the Act of March 4, 1922, 42 Stat. 414 (section 35–1129, District of Columbia Code), is repealed.

SEC. 256. Section 9 of the Act of February 7, 1914, 38 Stat. 282, as amended (section 22–2721, District of Columbia Code), is repealed.

SEC. 257. Section 5 of the Act of February 7, 1914, 38 Stat. 281 (section 22–2717, District of Columbia Code), is amended by striking out "2721" and inserting in lieu thereof "2720".

SEC. 258. Section 8 of the Act of February 7, 1914, 38 Stat. 282 (section 22–2720, District of Columbia Code), is amended by striking out "2721" and inserting in lieu thereof "2720".

SEC. 259. In addition to the provisions of law specifically amended or specifically repealed by this title, any other provision of law inconsistent with the provisions of part V of title 18, United States Code (adding by title II of this Act), is to that extent amended or repealed.

SEC. 260. The provisions of part V of title 18, United States Code, added by title II of this Act, and the amendments and repeals made by title II of this Act, shall take effect on the sixtieth day following the date of the enactment of this Act. No amendment to or repeal of any provision of law under title II of this Act shall affect any immunity to which any individual is entitled under such provision by reason of any testimony or other information given before such day.

Mr. CELLER (during the reading). Mr. Chairman, I ask unanimous consent that title II be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

The CHAIRMAN. If there are no amendments to be offered to title II, the Clerk will read.

The Clerk read as follows:

TITLE III—RECALCITRANT WITNESSES

SEC. 301. (a) Chapter 119, title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 1826. Recalcitrant witnesses

"(a) Whenever a witness in any proceeding before or ancillary to any court or grand jury of the United States refuses without just cause shown to comply with an order of the court to testify or provide other information, including any book, paper, document, record, recording or other material, the court, upon such refusal, or when such refusal is duly brought to its attention, may summarily order his confinement at a suitable place until such time as the witness is willing to give such testimony or provide such information. No period of such confinement shall exceed the life of—

"(1) The court proceeding, or

"(2) the term of the grand jury, including extensions,

before which such refusal to comply with the court order occurred, but in no event shall such confinement exceed eighteen months.

"(b) No person confined pursuant to subsection (a) of this section shall be admitted to bail pending the determination of an appeal taken by him from the order for his confinement if it appears that the appeal is frivolous or taken for delay. Any appeal from an order of confinement under this section shall be disposed of as soon as practicable, but not later than thirty days from the filing of such appeal."

(b) The analysis of chapter 119, title 28, United States Code, is amended by adding at the end thereof the following new item:

"1826. Recalcitrant witnesses.".

SEC. 302. (a) The first paragraph of section 1073, chapter 49, title 18, United States Code, is amended by inserting "or (3) to avoid service of, or contempt proceedings for alleged disobedience of, lawful process requiring attendance and the giving of testimony or the production of documentary evidence before an agency of a State empowered by the law of such State to conduct investigations of alleged criminal activities," immediately after "is charged,".

(b) The second paragraph of section 1073, chapter 49, title 18, United States Code, is amended by inserting immediately after "held in custody or confinement" a comma and adding "or in which an avoidance of service of process or a contempt referred to in clause (3) of the first paragraph of this section is alleged to have been committed,".

Mr. CELLER (during the reading). Mr. Chairman, I ask unanimous consent that title III be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

The CHAIRMAN. If there are no amendments to be offered to title III, the Clerk will read.

The Clerk read as follows:

TITLE IV—FALSE DECLARATIONS

SEC. 401 (a) Chapter 79, title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 1623. False declarations before grand jury or court

"(a) Whoever under oath in any proceeding before or ancillary to any court or grand jury of the United States knowingly makes any false material declaration or makes or uses any other information, including any book, paper, document, record, recording, or other material, knowing the same to contain any false material declaration, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

"(b) This section is applicable whether the conduct occurred within or without the United States.

"(c) An indictment or information for violation of this section alleging that, in any proceedings before or ancillary to any court or grand jury of the United States, the defendant under oath has knowingly made two or more declarations, which are inconsistent to the degree that one of them is necessarily false, need not specify which declaration is false if—

"(1) each declaration was material to the point in question, and

"(2) each declaration was made within the period of the statute of limitations for the offense charged under this section.

In any prosecution under this section, the falsity of a declaration set forth in the indictment or information shall be established sufficient for conviction by proof that the defendant while under oath made irreconcilably contradictory declarations material to the point in question in any proceeding before or ancillary to any court or grand jury. It shall be a defense to an indictment or information made pursuant to the first sentence of this subsection that the defendant at the time he made each declaration believed the declaration was true.

"(d) Where, in the same continuous court or grand jury proceeding in which a declaration is made, the person making the declaration admits such declaration to be false, such admission shall bar prosecution under this section if, at the time the admission is made, the declaration has not substantially affected the proceeding, or it has not become manifest that such falsity has been or will be exposed.

"(e) Proof beyond a reasonable doubt under this section is sufficient for conviction. It shall not be necessary that such proof be made by any particular number of witnesses or by documentary or other type of evidence."

(b) The analysis of chapter 79, title 18, United States Code, is amended by adding at the end thereof the following new item:

"1623. False declarations before grand jury or court."

Mr. CELLER (during the reading). Mr. Chairman, I ask unanimous consent that title IV be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

The CHAIRMAN. Are there any amendments to be offered to title IV? If not, the Clerk will read.

The Clerk read as follows:

TITLE V—PROTECTED FACILITIES FOR HOUSING GOVERNMENT WITNESSES

SEC. 501. The Attorney General of the United States is authorized to provide for the security of Government witnesses, potential Government witnesses, and the families of Government witnesses and potential witnesses in legal proceedings against any person alleged to have participated in an organized criminal activity.

SEC. 502. The Attorney General of the United States is authorized to rent, purchase, modify, or remodel protected housing facilities and to otherwise offer to provide for the health, safety, and welfare of witnesses and persons intended to be called as Government witnesses, and the families of witnesses and persons intended to be called as Government witnesses in legal proceedings instituted against any person alleged to have participated in an organized criminal activity whenever, in his judgment, testimony from, or a willingness to testify by, such a witness

would place his life or person, or the life or person of a member of his family or household, in jeopardy. Any person availing himself of an offer by the Attorney General to use such facilities may continue to use such facilities for as long as the Attorney General determines the jeopardy to his life or person continues.

SEC. 503. As used in this title, "Government" means the United States, any State, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof of the cost of maintaining and protecting such witnesses.

SEC. 504. There is hereby authorized to be appropriated from time to time such funds as are necessary to carry out the provisions of this title.

Mr. CELLER (during the reading). Mr. Chairman, I ask unanimous consent that title V be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

The CHAIRMAN. Are there any amendments to be offered to title V? If not, the Clerk will read.

The Clerk read as follows:

TITLE VI—DEPOSITIONS

SEC. 601. (a) Chapter 223, title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 3503. Depositions to preserve testimony

"(a) Whenever due to exceptional circumstances it is in the interest of justice that the testimony of a prospective witness of a party be taken and preserved, the court at any time after the filing of an indictment or information may upon motion of such party and notice to the parties order that the testimony of such witness be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place. If a witness is committed for failure to give bail to appear to testify at a trial or hearing, the court on written motion of the witness and upon notice to the parties may direct that his deposition be taken. After the deposition has been subscribed the court may discharge the witness. A motion by the Government to obtain an order under this section shall contain certification by the Attorney General or his designee that the legal proceeding is against a person who is believed to have participated in an organized criminal activity.

"(b) The party at whose instance a deposition is to be taken shall give to every party reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whom the notice is served, the court for cause shown may extend or shorten the time or change the place for taking the deposition. The officer having custody of a defendant shall be notified of the time and place set for the examination, and shall produce him at the examination and keep him in the presence of the witness during the examination. A defendant not in custody shall have the right to be present at the examination, but his failure, absent good cause shown, to appear after notice and tender of expenses shall constitute a waiver of that right and of any objection to the taking and use of the deposition based upon that right.

"(c) If a defendant is without counsel, the court shall advise him of his rights and assign counsel to represent him unless the defendant elects to proceed without counsel or is able to obtain counsel of his own choice. Whenever a deposition is taken at the instance of the Government, or whenever a deposition is taken at the instance of a defendant who appears to be unable to bear the expense of the taking of the deposition, the court may direct that the expenses of travel and subsistence of the defendant and his attorney for attendance at the examination shall be paid by the Government. In such event the marshal shall make payment accordingly.

"(d) A deposition shall be taken and filed in the manner provided in civil actions, provided that (1) in no event shall a deposition be taken of a party defendant without his consent, and (2) the scope of examination and cross-examination shall be such as would be allowed in the trial itself. On request or waiver by the defendant the court may direct that a deposition be taken on written interrogatories in the manner provided in civil actions. Such request shall constitute a waiver of any objection to the taking and use of the deposition based upon its being so taken.

"(e) The Government shall make available to the defendant for his examination and use at the taking of the deposition any statement of the witness being deposed which is in the possession of the Government and which the Government would be required to make available to the defendant if the witness were testifying at the trial.

"(f) At the trial or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used if it appears: That the witness is dead; or that the witness is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or that the witness is unable to attend or testify because of sickness or infirmity; or that the witness refuses in the trial or hearing to testify concerning the subject of the deposition or part offered; or that the party offering the deposition has been unable to procure the attendance of the witness by subpena. Any deposition may also be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness. If only a part of a deposition is offered in evidence by a party, an adverse party may require him to offer all of it which is relevant to the part offered and any party may offer other parts.

"(g) Objections to receiving in evidence a deposition or part thereof may be made as provided in civil actions."

(b) The analysis of chapter 223, title 18, United States Code, is amended by adding at the end thereof the following new item:

"3503. Depositions to preserve testimony."

Mr. CELLER (during the reading). Mr. Chairman, I ask unanimous consent that title VI be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

The CHAIRMAN. Are there any amendments to be offered to title VI? If not, the Clerk will read.

The Clerk read as follows:

TITLE VII—LITIGATION CONCERNING SOURCES OF EVIDENCE

PART A—SPECIAL FINDINGS

SEC. 701. The Congress finds that claims that evidence offered in proceedings was obtained by the exploitation of unlawful acts, and is therefore inadmissible in evidence, (1) often cannot reliably be determined when such claims concern evidence of events occurring years after the allegedly unlawful act, and (2) when the allegedly unlawful act has occurred more than five years prior to the event in question, there is virtually no likelihood that the evidence offered to prove the event has been obtained by the exploitation of that allegedly unlawful act.

PART B—LITIGATION CONCERNING SOURCES OF EVIDENCE

SEC. 702. (a) Chapter 223, title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 3504. Litigation concerning sources of evidence

"(a) In any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, or other authority of the United States—

"(1) upon a claim by a party aggrieved that evidence is inadmissible because it is the primary product of an unlawful act or because it was obtained by the exploitation of an unlawful act, the opponent of the claim shall affirm or deny the occurrence of the alleged unlawful act;

"(2) disclosure of information for a determination if evidence is inadmissible because it is the primary product of an unlawful act occurring prior to June 19, 1968, or because it was obtained by the exploitation of an unlawful act occurring prior to June 19, 1968, shall not be required unless such information may be relevant to a pending claim of such inadmissibility; and

"(3) no claim shall be considered that evidence of an event is inadmissible on the ground that such evidence was obtained by the exploitation of an unlawful act occurring prior to June 19, 1968, if such event occurred more than five years after such allegedly unlawful act.

"(b) As used in this section 'unlawful act' means any act the use of any electronic, mechanical, or other device (as defined in section 2510(5) of this title) in violation of the Constitution or laws of the United States or any regulation or standard promulgated pursuant thereto."

(b) The analysis of chapter 223, title 18, United States Code, is amended by adding at the end thereof the following new item:

"3504. Litigation concerning sources of evidence."

SEC. 703. This title shall apply to all proceedings, regardless of when commenced, occurring after the date of its enactment. Paragraph (3) of subsection (a) of section 3504, chapter 223, title 18, United States Code, shall not apply to any proceeding in which all information to be relied upon to establish inadmissibility was possessed by the party making such claim and adduced in such proceeding prior to such enactment.

Mr. CELLER (during the reading) Mr. Chairman, I ask unanimous consent that title VII be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

The CHAIRMAN. Are there any amendments to be offered to title VII? If not, the Clerk will read.

The Clerk read as follows:

TITLE VIII—SYNDICATED GAMBLING

PART A—SPECIAL FINDINGS

SEC. 801. The Congress finds that illegal gambling involves widespread use of, and has an effect upon, interstate commerce and the facilities thereof.

PART B—OBSTRUCTION OF STATE OR LOCAL LAW ENFORCEMENT

SEC. 802. (a) Chapter 73, title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 1511. Obstruction of State or local law enforcement

"(a) It shall be unlawful for two or more persons to conspire to obstruct the enforcement of the criminal laws of a State or political subdivision thereof, with the intent to facilitate an illegal gambling business if—

"(1) one or more of such persons does any act to effect the object of such a conspiracy;

"(2) one or more of such persons is an official or employee, elected, appointed, or otherwise, of such State or political subdivision; and

"(3) one or more of such persons conducts, finances manages, supervises, directs, or owns all or part of an illegal gambling business.

(b) As used in this section—

"(1) 'illegal gambling business' means a gambling business which—

"(i) is a violation of law of a State or political subdivision in which it is conducted;

"(ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and

"(iii) has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of $2,000 in any single day.

"(2) 'gambling' includes but is not limited to pool selling, bookmaking, maintaining slot machines, roulette wheels, or dice tables, and conducting lotteries, policy, bolita or numbers games, or selling chances therein.

"(3) 'State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

"(c) This section shall not apply to any bingo game, lottery, or similar game of chance conducted by an organization exempt from tax under paragraph (3) of subsection (c) of section 501 of the Internal Revenue Code of 1954, as amended, if no part of the gross receipts derived from such activity inures to the benefit of any private shareholder, member, or employee of such organization, except as compensation for actual expenses incurred by him in the conduct of such activity.

"(d) Whoever violates this section shall be punished by a fine of not more than $20,000 or imprisonment for not more than five years, or both."

(b) The analysis of chapter 73, title 18, United States Code, is amended by adding at the end thereof the following new item:

"1511. Obstruction of State or local law enforcement."

PART C— ILLEGAL GAMBLING BUSINESS

SEC. 803. (a) Chapter 95, title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 1955. Prohibition of illegal gambling businesses

"(a) Whoever conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business shall be fined not more than $20,000 or imprisoned not more than five years, or both.

"(b) As used in this section—

"(1) 'illegal gambling business' means a gambling business which—

"(i) is a violation of the law of a State or political subdivision in which it is conducted;

"(ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and

"(iii) has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of $2,000 in any single day.

"(2) 'gambling' includes but is not limited to pool selling, bookmaking, maintaining slot machines, roulette wheels or dice tables, and conducting lotteries, policy, bolita or numbers games, or selling chances therein.

"(3) 'State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

"(c) If five or more persons conduct, finance, manage, supervise, direct, or own all or part of a gambling business and such business operates for two or more successive days, then, for the purpose of obtaining warants for arrests, interceptions, and other searches and seizures, probable cause that the business receives gross revenue in excess of $2,000 in any single day shall be deemed to have been established.

"(d) Any property, including money, used in violation of the provisions of this section may be seized and forfeited to the United States. All provisions of law relating to the seizure, summary, and judicial forfeiture procedures, and condemnation of vessels, vehicles, merchandise, and baggage for violation of the customs laws; the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from such sale; the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred or alleged to have been incurred under the provisions of this section, insofar as applicable and not inconsistent with such provisions. Such duties as are imposed upon the collector of customs or any other person in respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the customs laws shall be performed with respect to seizures and forfeitures of property used or intended for use in violation of this section by such officers, agents, or other persons as may be designated for that purpose by the Attorney General.

"(e) This section shall not apply to any bingo game, lottery, or similar game of chance conducted by an organization exempt from tax under paragraph (3) of subsection (c) of section 501 of the Internal Revenue Code of 1954, as amended, if no part of the gross receipts derived from such activity inures to the benefit of any private shareholder, member, or employee of such organization except as compensation for actual expenses incurred by him in the conduct of such activity."

(b) The analysis of chapter 95, title 18, United States Code, is amended by adding at the end thereof the following new item:

"1955. Prohibition of illegal gambling businesses."

PART D—COMMISSION TO REVIEW NATIONAL POLICY TOWARD GAMBLING

ESTABLISHMENT

SEC. 804. (a) There is hereby established two years after the effective date of this Act a Commission on the Review of the National Policy Toward Gambling.

(b) The Commission shall be composed of fifteen members appointed as follows:

(1) four appointed by the President of the Senate from Members of the Senate, of whom two shall be members of the majority party, and two shall be members of the minority part;

(2) four appointed by the Speaker of the House of Representatives from Members of the House of Representatives, of whom two shall be members of the majority party, and two shall be members of the minority party; and

(3) seven appointed by the President of the United States from persons specially qualified by training and experience to perform the duties of the Commission, none of whom shall be officers of the executive branch of the Government.

(c) The President of the United States shall designate a Chairman from among the members of the Commission. Any vacancy in the Commission shall not affect its powers but shall be filled in the same manner in which the original appointment was made.

(d) Eight members of the Commission shall constitute a quorum.

DUTIES

SEC. 805. (a) It shall be the duty of the Commission to conduct a comprehensive legal and factual study of gambling in the United States and existing Federal, State, and local policy and practices with respect to legal prohibition and taxation of gambling activities and to formulate and propose such changes in those policies and practices as the Commission may deem appropriate. In such study and review the Commission shall—

(1) review the effectiveness of existing practices in law enforcement, judicial administration, and corrections in the United States and in foreign legal jurisdictions for the enforcement of the prohibition and taxation of gambling activities and consider possible alternatives to such practices; and

(2) prepare a study of existing statutes of the United States that prohibit and tax gambling acivities, and such a codification, revision, or repeal thereof as the Commission shall determine to be required to carry into effect such policy and practice changes as it may deem to be necessary or desirable.

(b) The Commission shall make such interim reports as it deems advisable. It shall make a final report of its findings and recommendations to the President of the United States and to the Congress within the four-year period following the establishment of the Commission.

(c) Sixty days after the submission of its final report, the Commission shall cease to exist.

POWERS

SEC. 806. (a) The Commission or any duly authorized subcommittee or member thereof may, for the purpose of carrying out the provisions of this title, hold such hearings, sit and act at such times and places, administer such oaths, and require by subpena or otherwise the attendance and testimony of such witnesses and the production of such books, records, correspondence, memorandums, papers, and documents as the Commission or such subcommittee or member may deem advisable. Any member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission or before such subcommittee or member. Subpenas may be issued under the signature of the Chairman or any duly designated member of the Commission, and may be served by any person designated by the Chairman or such member.

(b) In the case of contumacy or refusal to obey a subpena issued under subsection (a) by any person who resides, is found, or transacts business within the jurisdiction of any district court of the United States, the district court, at the request of the Chairman of the Commission, shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or a subcommittee or member thereof, there to produce evidence if so ordered, or there to give testimony touching the matter under inquiry. Any failure of any such person to obey any such order of the court may be punished by the court as a contempt thereof.

(c) The Commission shall be "an agency of the United States" under subsection (1), section 6001, title 18, United States Code, for the purpose of granting immunity to witnesses.

(d) Each department, agency, and instrumentality of the executive branch of the Government including independent agencies, is authorized and directed to furnish to the Commission, upon request made by the Chairman, on a reimbursable basis or otherwise, such statistical data, reports, and other information as the Commission deems necessary to carry out its functions under this title. The Chairman is further authorized to

call upon the departments, agencies, and other offices of the several States to furnish, on a reimbursable basis or otherwise, such statistical data, reports, and other information as the Commission deems necessary to carry out its functions under this title.

COMPENSATION AND EXEMPTION OF MEMBERS

SEC. 807. (a) A member of the Commission who is a Member of Congress or a member of the Federal judiciary shall serve without additional compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of duties vested in the Commission.

(b) A member of the Commission who is not a member of Congress or a member of the Federal judiciary shall receive $100 per diem when engaged in the actual performance of duties vested in the Commission plus reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of such duties.

STAFF

SEC. 808. (a) Subject to such rules and regulations as may be adopted by the Commission, the Chairman shall have the power to—

(1) appoint and fix the compensation of an Executive Director, and such additional staff personnel as he deems necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at rates not in excess of the maximum rate for GS–18 of the General Schedule under section 5332 of such title; and

(2) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code, but at rates not to exceed $100 a day for individuals.

(b) In making appointments pursuant to this subsection, the Chairman shall include among his appointments individuals determined by the Chairman to be competent social scientists, lawyers, and law enforcement officers.

EXPENSES

SEC. 809. There are hereby authorized to be appropriated to the Commission such sums as may be necessary to carry this title into effect.

PART E—GENERAL PROVISIONS

SEC. 810. Paragraph (c), subsection (1), Section 2516, title 18, United States Code, is amended by adding "section 1511 (obstruction of State or local law enforcement)," after "section 1510 (obstruction of criminal investigations)," and by adding "section 1955 (prohibition of business enterprises of gambling)," after "section 1954 (offer, acceptance, or solicitation to influence operations of employee benefit plan),".

SEC. 811. No provision of this title indicates an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of a State or possession, or a political subdivision of a State or possession, on the same subject matter, or to relieve any person of any obligation imposed by any law of any State or possession, or political subdivision of a State or possession.

Mr. CELLER (during the reading). Mr. Chairman, I ask unanimous consent that title VIII be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

The CHAIRMAN. Are there any amendments to be offered to title VIII? If not, the Clerk will read.

The Clerk read as follows:

TITLE IIX—RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

SEC. 901. (a) Title 18, United States Code, is amended by adding immediately after chapter 95 thereof the following new chapter:

"Chapter 96.—RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

"Sec.

"1961. Definitions.
"1962. Prohibited racketeering activities.
"1963. Criminal penalties.
"1964. Civil remedies.
"1965. Venue and process.
"1966. Expedition of actions.
"1967. Evidence.
"1968. Civil investigative demand.

"§ 1961. Definitions

"As used in this chapter—

"(1) 'racketeering activity' means (A) any act or threat involving murder, kidnaping, gambling, arson, robbery, bribery, extortion, or dealing in narcotic or other dangerous drugs, which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891–894 (relating to extortionate credit transactions), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), sections 2314 and 2315 (relating to interstate transportation of stolen property), sections 2421–24 (relating to white slave traffic), (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), or (D) any offense involving bankruptcy fraud, fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic or other dangerous drugs, punishable under any law of the United States;

"(2) 'State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency or instrumentality thereof;

"(3) 'person' includes any individual or entity capable of holding a legal or beneficial interest in property;

"(4) 'enterprise' includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

"(5) 'pattern of racketeering activity' requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

"(6) 'unlawful debt' means a debt (A) incurred or contracted in gambling activity which was in violation of the law of the United States, a State or political subdivision thereof, or which is unenforceable under State or Federal law in whole or in part as to principal or interest because of the laws relating to usury, and (B) which was incurred in connection with the business of gambling in violation of the law of the United States, a State or political subdivision thereof, or the business of lending money or a thing of value at a rate usurious under State or Federal law, where the usurious rate is at least twice the enforceable rate;

"(7) 'racketeering investigator' means any attorney or investigator so designated by the Attorney General and charged with the duty of enforcing or carrying into effect this chapter;

"(8) 'racketeering investigation' means any inquiry conducted by any racketeering investigator for the purpose of ascertaining whether any person has been involved in any violation of this chapter or of any final order, judgment, or decree of any court of the United States, duly entered in any case or proceeding arising under this chapter;

"(9) 'documentary material' includes any book, paper, document, record, recording, or other material; and

"(10) 'Attorney General' includes the Attorney General of the United States, the Deputy Attorney General of the United States, any Assistant Attorney General of the United States, or any employee of the Department of Justice or any employee of any department or agency of the United States so designated by the Attorney General to carry out the powers conferred on the Attorney General by this chapter. Any department or agency so designated may use in investigations authorized by this chapter either the investigative provisions of this chapter or the investigative power of such department or agency otherwise conferred by law.

"§ 1962. Prohibited activities

"(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issues, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

"(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

"(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

"(d) It shall be unlawful for any person to

conspire to violate any of the provisions of subsections (a), (b), or (c) of this section.

"§ 1963. Criminal penalties

"(a) Whoever violates any provision of section 1962 of this chapter shall be fined not more than $25,000 or imprisoned not more than twenty years, or both, and shall forfeit to the United States (1) any interest he has acquired or maintained in violation of section 1962, and (2) any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over, any enterprise which he has established, operated, controlled, conducted, or participated in the conduct of, in violation of section 1962.

"(b) In any action brought by the United States under this section, the district courts of the United States shall have jurisdiction to enter such restraining orders or prohibitions, or to take such other actions, including, but not limited to, the acceptance of satisfactory performance bonds, in connection with any property or other interest subject to forfeiture under this section, as it shall deem proper.

"(c) Upon conviction of a person under this section, the court shall authorize the Attorney General to seize all property or other interest declared forfeited under this section upon such terms and conditions as the court shall deem proper. If a property right or other interest is not exercisable or transferable for value by the United States, it shall expire, and shall not revert to the convicted person. All provisions of law relating to the disposition of property, or the proceeds from the sale thereof, or the remission or mitigation of forfeitures for violation of the customs laws, and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions hereof. Such duties as are imposed upon the collector of customs or any other person with respect to the disposition of property under the customs laws shall be performed under this chapter by the Attorney General. The United States shall dispose of all such property as soon as commercially feasible, making due provision for the rights of innocent persons.

"§ 1964. Civil remedies

"(a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

"(b) The Attorney General may institute proceedings under this section. In any action brought by the United States under this section, the court shall proceed as soon as practicable to the hearing and determination thereof. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

"(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

"(d) A final judgment or decree rendered in favor of the United States in any criminal proceeding brought by the United States under this chapter shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by the United States.

"§ 1965. Venue and process

"(a) Any civil action or proceeding under this chapter against any person may be instituted in the district court of the United States for any district in which such person resides, is found, has an agent, or transacts his affairs.

"(b) In any action under section 1964 of this chapter in any district court of the United States in which it is shown that the ends of justice require that other parties residing in any other district be brought before the court, the court may cause such parties to be summoned, and process for that purpose may be served in any judicial district of the United States by the marshal thereof.

"(c) In any civil or criminal action or proceeding instituted by the United States under this chapter in the district court of the United States for any judicial district, subpenas issued by such court to compel the attendance of witnesses may be served in any other judicial district, except that in any civil action or proceeding no such subpena shall be issued for service upon any individual who resides in another district at a place more than one hundred miles from the place at which such court is held without approval given by a judge of such court upon a showing of good cause.

"(d) All other process in any action or proceeding under this chapter may be served on any person in any judicial district in which such person resides, is found, has an agent, or transacts his affairs.

"§ 1966. Expedition of actions

"In any civil action instituted under this chapter by the United States in any district court of the United States, the Attorney General may file with the clerk of such court a certificate stating that in his opinion the case is of general public importance. A copy of that certificate shall be furnished immediately by such clerk to the chief judge or in his absence to the presiding district judge of the district in which such action is pending. Upon receipt of such copy, such judge shall designate immediately a judge of that district to hear and determine action. The judge so designated shall assign such action for hearing as soon as practicable, participate in the hearings and determination thereof, and cause such action to be expedited in every way.

"§ 1967. Evidence

"In any proceeding ancillary to or in any civil action instituted by the United States under this chapter the proceedings may be open or closed to the public at the discretion of the court after consideration of the rights of affected persons.

"§ 1968. Civil investigative demand

"(a) Whenever the Attorney General has reason to believe that any person or enterprise may be in possession, custody, or control of any documentary materials relevant to a racketeering investigation, he may, prior to the institution of a civil or criminal proceeding thereon, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to produce such material for examination.

"(b) Each such demand shall—

"(1) state the nature of the conduct constituting the alleged racketeering violation which is under investigation and the provision of law applicable thereto;

"(2) describe the class or classes of documentary material produced thereunder with such definiteness and certainty as to permit such material to be fairly identified;

"(3) state that the demand is returnable forthwith or prescribe a return date which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction; and

"(4) identify the custodian to whom such material shall be made available.

"(c) No such demand shall—

"(1) contain any requirement which would be held to be unreasonable if contained in a subpena duces tecum issued by a court of the United States in aid of a grand jury investigation of such alleged racketeering violation; or

"(2) require the production of any documentary evidence which would be privileged from disclosure if demanded by a subpena duces tecum issued by a court of the United States in aid of a grand jury investigation of such alleged racketeering violation.

"(d) Service of any such demand or any petition filed under this section may be made upon a person by—

"(1) delivering a duly executed copy thereof to any partner, executive officer, managing agent, or general agent thereof, or to any agent thereof authorized by appointment or by law to receive service of process on behalf of such person, or upon any individual person;

"(2) delivering a duly executed copy thereof to the principal office or place of business of the person to be served; or

"(3) depositing such copy in the United States mail, by registered or certified mail duly addressed to such person at its principal office or place of business.

"(e) A certified return by the individual serving any such demand or petition setting forth the manner of such service shall be prima facie proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

"(f) (1) The Attorney General shall designate a racketeering investigator to serve as racketeer document custodian, and such additional racketeering investigators as he shall determine from time to time to be necessary to serve as deputies to such officer.

"(2) Any person upon whom any demand issued under this section has been duly served shall make such material available for inspection and copying or reproduction to the custodian designated therein at the principal place of business of such person, or at such other place as such custodian and such person thereafter may agree and prescribe in writing or as the court may direct, pursuant to this section on the return date specified in such demand, or on such later date as such custodian may prescribe in writing. Such person may upon written agreement between such person and the custodian substitute for copies of all or any part of such material originals thereof.

"(3) The custodian to whom any documentary material is so delivered shall take physical possession thereof, and shall be responsible for the use made thereof and for the return thereof pursuant to this chapter. The custodian may cause the preparation of such copies of such documentary material as may be required for official use under regulations which shall be promulgated by the Attorney General. While in the possession of the custodian, no material so produced shall be available for examination, without the consent of the person who produced such material, by any individual other than the Attorney General. Under such reasonable terms and conditions as the Attorney General shall prescribe, documentary material while in the possession of the custodian shall be available for examination by the person who produced such material or any duly authorized representatives of such person.

"(4) Whenever any attorney has been designated to appear on behalf of the United States before any court or grand jury in any

case or proceeding involving any alleged violation of this chapter, the custodian may deliver to such attorney such documentary material in the possession of the custodian as such attorney determines to be required for use in the presentation of such case or proceeding on behalf of the United States. Upon the conclusion of any such case or proceeding, such attorney shall return to the custodian any documentary material so withdrawn which has not passed into the control of such court or grand jury through the introduction thereof into the record of such case or proceeding.

"(5) Upon the completion of—

"(i) the racketeering investigation for which any documentary material was produced under this chapter, and

"(ii) any case or proceeding arising from such investigation,

the custodian shall return to the person who produced such material all such material other than copies thereof made by the Attorney General pursuant to this subsection which has not passed into the control of any court or grand jury through the introduction thereof into the record of such case or proceeding.

"(6) When any documentary material has been produced by any person under this section for use in any racketeering investigation, and no such case or proceeding arising therefrom has been instituted within a reasonable time after completion of the examination and analysis of all evidence assembled in the course of such investigation, such person shall be entitled, upon written demand made upon the Attorney General, to the return of all documentary material other than copies thereof made pursuant to this subsection so produced by such person.

"(7) In the event of the death, disability, or separation from service of the custodian of any documentary material produced under any demand issued under this section or the official relief of such custodian from responsibility for the custody and control of such material, the Attorney General shall promptly—

"(i) designate another racketeering investigator to serve as custodian thereof, and

"(i) transmit notice in writing to the person who produced such material as to the identity and address of the successor so designated.

Any successor so designated shall have with regard to such materials all duties and responsibilities imposed by this section upon his predecessor in office with regard thereto, except that he shall not be held responsible for any default or dereliction which occurred before his designation as custodian.

"(g) Whenever any person fails to comply with any civil investigation demand duly served upon him under this section or whenever satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the Attorney General may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of this section, except that if such person transacts business in more than one such district such petition shall be filed in the district in which such person maintains his principal place of business, or in such other district in which such person transacts business as may be agreed upon by the parties to such petition.

"(h) Within twenty days after the service of any such demand upon any person, or at any time before the return date specified in the demand, whichever period is shorter, such person may file, in the district court of the United States for the judicial district within which such person resides, is found, or transacts business, and serve upon such custodian a petition for an order of such court modifying or setting aside such demand. The time allowed for compliance with the demand in whole or in part as deemed proper and ordered by the court shall not run during the pendency of such petition in the court. Such petition shall specify each ground upon which the petitioner relies in seeking such relief, and may be based upon any failure of such demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person.

"(i) At any time during which any custodian is in custody or control of any documentary material delivered by any person in compliance with any such demand, such person may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian a petition for an order of such court requiring the performance by such custodian of any duty imposed upon him by this section.

"(j) Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of this section."

(b) The table of contents of part I, title 18, United States Code, is amended by adding immediately after

"95. Racketeering ---------- 1951"

the following new item:

"96. Racketeer Influenced and Corrupt Organizations ---------- 1961"

SEC. 902. (a) Paragraph (c), subsection (1), section 2516, title 18, United States Code, is amended by inserting at the end thereof between the parenthesis and the semicolon ", section 1963 (violations with respect to racketeer influenced and corrupt organizations)".

(b) Subsection (3), section 2517, title 18, United States Code, is amended by striking "criminal proceedings in any court of the United States or of any State or in any Federal or State grand jury proceeding" and inserting in lieu thereof "proceeding held under the authority of the United States or of any State or political subdivision thereof".

SEC. 903. The third paragraph, section 1505, title 18, United States Code, is amended by inserting "or section 1968 of this title" after "Act" and before "willfully".

SEC. 904. (a) The provisions of this title shall be liberally construed to effectuate its remedial purposes.

(b) Nothing in this title shall supersede any provision of Federal, State, or other law imposing criminal penalties or affording civil remedies in addition to those provided for in this title.

(c) Nothing contained in this title shall impair the authority of any attorney representing the United States to—

(1) lay before any grand jury impaneled by any district court of the United States any evidence concerning any alleged racketeering violation of law;

(2) invoke the power of any such court to compel the production of any evidence before any such grand jury; or

(3) institute any proceeding to enforce any order or process issued in execution of such power or to punish disobedience of any such order or process by any person.

Mr. CELLER (during the reading). Mr. Chairman, I ask unanimous consent that title IX be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

AMENDMENT OFFERED BY MR. MIKVA

Mr. MIKVA. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. MIKVA: At line 10, on page 130, of Section 901, add the following after the period: "*Provided*, any such person who brings a frivolous suit, or a suit for the purpose of harassment, shall be subject to treble damages for injury to the defendant, or to his business or property."

(Mr. MIKVA asked and was given permission to revise and extend his remarks.)

Mr. MIKVA. Mr. Chairman, lest some Members may think the bill has been going overly fast, I would assure you that many of the intermediate titles are not controversial and would indeed be supported by every Member if standing by themselves. When we get to titles IX and X, however, we start getting into some situations which are controversial, as those present on the floor yesterday, or those who have read the RECORD or those who have even read the bill will realize. We are here moving very far afield from the traditional concepts of criminal law.

Title IX is the most specific example of that. One of the things title IX does is to make almost all State crimes and most Federal crimes acts of racketeering.

I call attention to pages 122 and 123, in which all kinds of actions are involved. Any violation of the Landrum-Griffin Act, for example, or of the Taft-Hartley Act, under this title IX, becomes an act of racketeering.

Any violations of State law pertaining to gambling, robbery, bribery, or dealing in narcotics become acts of racketeering. Now, there need not be a conviction under any of these laws for it to be racketeering. My amendment has to do with an additional innovation in criminal law which says—and I now call your attention to page 30—that any person injured in his business because somebody has engaged in an act of racketeering in an interstate business may sue in any appropriate U.S. district court and shall recover threefold the damages he sustains and the cost of the suit, including reasonable attorneys' fees.

The advocates of this section will tell you that this is an innovative reference to the antitrust laws. I am all for that. But the trouble with this provision is that a dangerous tool is given to a competitor who wants to go after somebody who is competing too vigorously against him; he can show, for example, that his competition won some money gambling in Las Vegas and took the money and put it into an interstate business. If in the State in which he is engaged in an interstate business, gambling is in violation of the law, then that man is guilty of racketeering under S. 30. In adition to the criminal penalties, any competitor may go in and seek threefold damages, which means that he can literally drive his competitor out of business.

My amendment is a perfecting amendment. I argued that I thought the entire title should be struck. What my amendment says is that at least we ought to protect the innocent businessman from some harsh competitor who seeks to abuse this section by filing frivolous law-

suits against him. I can assure you that anyone who files a lawsuit contending one of his competitors is guilty of racketeering will have injured his competitor. Whether he recovers any money or not, he will have done a pretty good job of besmirching the business reputation of his competitor. This amendment says that if it turns out that the suit is frivolous or filed for the purpose of harassment, the defendant ought to be entitled to recover treble damages for any damage that he suffered to his business or his property.

This is just the other side of the coin. If it is sauce for the goose to say that he ought to have this sort of protection, then we ought to furnish protection for the gander who might get stuck by an aggressive competitor bringing such a suit. No matter how frivolous or harassing the suit might be, once it is brought, a great deal of damage will be done by the suit.

I suggest that this does not change the substance of title IX or answer any of the other serious problems that I have with title IX, but at least it takes care of one section and sees to it that we do not let some criminal law be abused by an overzealous competitor.

Mr. Chairman, I urge the adoption of my amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois (Mr. MIKVA).

The question was taken; and on a division (demanded by Mr. MIKVA) there were—ayes 22, noes 45.

So the amendment was rejected.

AMENDMENT OFFERED BY MR. BIAGGI

Mr. BIAGGI. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. BIAGGI: Page 125, line 20, strike out the word "and," and on page 126, after line 7, insert the following:

"(11) 'Mafia and La Cosa Nostra Organizations' mean nationally organized criminal groups composed of persons of Italian ancestry forming an underworld government ruled by a form of board of directors, who direct or conduct a pattern of racketeering activity and control the national operation of a criminal enterprise in furtherance of a monopolistic trade restraining criminal conspiracy."

Page 127, after line 19, insert the following:

"(e) It shall be unlawful for any person to be a member of a Mafia or a La Cosa Nostra organization."

Page 127, line 22, after the words "of this chapter" insert ", other than subsection (e) thereof,".

Page 129, after line 8, insert the following:

"(d) whoever violates subsection (e) of section 1962 of this chapter shall be fined not more than $5,000 or imprisoned not more than 5 years, or both."

Page 130, after line 16, insert the following:

"(e) Whoever orally or through the use of radio, television, movies, newspapers, magazines, books, letters, circulars, petitions or other media in physical or mechanical form, which travel in interstate commerce, declare a person to be a member of, or an alleged member of, a Mafia or a La Cosa Nostra organization shall, if such declaration is untrue, be liable without proof of special damages, in a civil action commenced by such person in the United States District Courts of any district to which such declaration is transmitted or in which it appears. The making of such a declaration shall be considered defamatory on its face and shall be actionable as liable per se. The person making the declaration shall be liable for general and punitive damages, and if provable, for special damages. Notwithstanding any jurisdictional limitation with respect to the amount in controversy, the United States District Courts shall have legal jurisdiction of civil actions arising under this subsection."

(Mr. BIAGGI asked and was given permission to revise and extend his remarks.)

Mr. BIAGGI. Mr. Chairman, the amendment which I have offered, if enacted, will be considered the first effective law enforcement tool to combat the alleged activities of the criminal organizations known as the Mafia and the Cosa Nostra.

Although the organized Crime Control Act we are considering today has, for the most part, some merit, the drafters have deliberately dodged an area of deep concern to law enforcement people and millions of law-abiding Americans of Italian extraction. The bill, in effect, fails to deal with the role of the Mafia and La Cosa Nostra in the total organized crime picture in America.

To correct this glaring deficiency in the bill, my amendment will do the following:

First. It will deffne, in clear and precise language, "Mafia" and "La Cosa Nostra" as organized national criminal groups engaged in criminal conspiracies to commit overt acts which are now prohibited in existing law and will be prohibited by this bill, if enacted.

Second. It will make membership in these organizations a Federal crime subject to prosecution. However, unlike a bill of attainder, it will inflict no punishment unless and until the full course of due process has been expended.

Third. It will subject those persons who falsely accuse others of membership in Mafia or La Cosa Nostra organizations to libel per se.

Mr. Chairman, I am introducing this amendment for several reasons.

The first is to provide, once and for all, a clear and precise definition of Mafia and La Cosa Nostra which serves as a basis for outlawing membership in these groups.

Such legislation would enable our law enforcement officers across the Nation to combat organized crime more realistically. The need for such a definition is obvious. And it was made more dramatic by the results of a nationwide survey I conducted among Federal law enforcement officials, the State attorneys general, State chiefs of police, police chiefs of the 30 largest cities, all New York State county district attorneys, as well as the newspaper and broadcast media in the 30 largest cities in the United States.

The returns revealed that very few of those who profess to be in the know regarding Mafia and Cosa Nostra operations, have a clear concept of what these organizations are or do.

No more than 30 percent of the law-enforcement officials who responded were able to clearly define these groups. Yet these same men are on the front line combatting organized crime.

Less than half of the newspaper and broadcast media officials were able to offer a definition. Yet, they continue to use the terms daily and indicriminately to describe criminal activity performed by certain people.

Mr. Chairman, I have also sought to end the broad application of these terms to individual citizens solely because they are Italian or of Italian origin.

Too often such descriptions as "alleged member of the Mafia," or "a reputed Mafia figure," or "a suspected Mafioso figure" appear in print or come over the airways without any substantiation whatsoever.

Although these slurs are usually preceded by qualifying phrases, the innuendo and the intent are clear to the listener or the reader. Those persons that practice such behavior virtually try as well as convict the targets of their declarations—on the spot.

The libel per se provision of my amendment will hopefully put an end to this practice, while at the same time protect the rights of the media to expose criminal activity wherever and whenever it actually exists.

Mr. Chairman, if we continue to treat organized crime in terms of "a secret underworld combine" of Cosa Nostra groups and fail to deal with it forthrightly, we will only further entrench its secrecy and proliferate the ethnic innuendoes that come from the Government, the press, the broadcast media, and a good part of the general public.

What is needed is a firm stand on the part of Congress regarding Mafia and La Cosa Nostra, before organized criminal legislation begins to have meaning. To give our law-enforcement officers an effective tool they so sorely need in their fight against identifiable members of these secret criminal organizations, a legal definition must be provided. Having done this, legislative sanctions against their existence will be feasible.

In effect, by carefully defining what Mafia and Cosa Nostra organizations are, Congress can declare mere membership in these organizations to be a Federal crime.

I know many of my colleagues will raise questions concerning the constitutionality of this amendment. I am sure a previous attempt to outlaw membership in the Communist Party by the Smith Act which was struck down by a Supreme Court decision will be used as an example.

Let me say that my amendment bears no resemblance to that act. In my amendment I define membership in such a way as to eliminate possible action against an individual for anything resembling innocent association.

Instead, my amendment is more closely alined with the conspiracy provisions which are well established in both common and statutory law.

The question of constitutionality will always come up in controversial legislation. Many of my colleagues here had doubts about the constitutionality of the Civil Rights Act of 1964. Yet, that law

was passed and has since stood the test of the judiciary.

Many legislators had even more serious doubts about the constitutionality of the Voting Rights Act recently passed along with its controversial 18-year-old voting provision. And it seems that this law will also be sustained in the near future.

We all know that legislation along the lines I am proposing is greatly needed. During the 89th Congress similar legislation was introduced in the Senate, which was never acted on.

I believe my amendment reflects the experience of that previous bill. I am convinced that my amendment will stand the test of judicial process and go on to serve the urgent need of our law-enforcement agencies in their fight against organized crime in America.

Mr. CELLER. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I have a great respect for the gentleman from New York (Mr. BIAGGI), who has just offered the amendment, but I must in good conscience express opposition to its contents.

The amendment is unworkable, vague, and I think it will create a lot of mischief. Its constitutional soundness is highly doubtful.

The definition of the Mafia, or Cosa Nostra, in the amendment contains a number of imprecise, uncertain, and unclear terms. For example, what is "nationally organized"? What constitutes a "criminal group"? What does "underworld government" mean? What is a "form of a board of directors"?

All these terms appear in the amendment. This is a criminal statute, and criminal statutes must be precisely drawn.

The definition further requires that the criminal enterprise be in furtherance of a "monopolistic trade-restraining criminal conspiracy." What does that terminology mean?

The amendment will penalize "members," whether they be passive or active; whether they be organizers or hangers-on. Just being a member of this group would be sufficient to get one within the toils of the criminal statute. "Membership" is not defined in the amendment.

I must oppose the amendment because it is riddled with imperfections.

Insofar as the amendment purports to protect against libel or slander, it should be pointed out that it is already actionable defamation to falsely charge another with being a rapist, a robber, a narcotic addict, and so on. But to enact a Federal criminal libel law, based on the imprecise and vague definition in this proposal, raises a number of serious first amendment questions.

We do not have Federal criminal libel law.

I need not belabor the situation longer by saying that I must most regretfully and yet most respectfully decline to accept the amendment, and I hope that it will be voted down.

Mr. POFF. Mr. Chairman, I move to strike out the last word.

Mr. Chairman, if I may have the attention of the author of the amendment, I first want to say that I can appreciate the motivation which prompts him. I hope he will not consider the opposition which has just been expressed by the distinguished chairman of the committee or the opposition I am about to express in any way is intended to be a reflection upon him or upon the motivation which he seeks to serve.

Did I understand the gentleman to say in explanation of the amendment that it was limited in its effect to people of Sicilian extraction?

Mr. BIAGGI. No; I did not say "Sicilian," I said, "Italian ancestry."

Mr. POFF. Then am I correct, that it would apply only to people of Italian ancestry?

Mr. BIAGGI. I think the usage and application of the concept and image that has been created over the decades would and has led everyone to believe, as well as the Senate report and the Director of the FBI's statements and his compilation of "families" in connection with Cosa Nostra and Mafia—has led everyone to believe that we do not have any Martians in that particular group and they are all Americans of Italian ancestry or of Italian ancestry originally from Italy.

I am dealing frontally with a situation that has not been dealt with honestly.

Mr. POFF. Mr. Chairman, I am concerned that such an amendment would raise serious constitutional problems. The Supreme Court has observed that simple membership in an organization is not enough to justify the imposition of criminal sanctions. *Scales* v. *United States*, 367 U.S. 203 (1961). In *Lanzetta* v. *New Jersey*, 306 U.S. 451 (1939), the U.S. Supreme Court struck down a New Jersey statute making membership in a criminal gang a punishable offense. In that case, and in *Robison* v. *California*, 370 U.S. 660 (1962), the Supreme Court indicated that status itself may not be made a basis for a criminal conviction.

Similar legislation, making membership in the Mafia a criminal offense, was introduced in the 89th Congress. The Attorney General of the United States, Mr. Katzenbach, in testifying concerning that bill—S. 2187—before the Senate Subcommittee on Criminal Laws and Procedures of the Committee on the Judiciary, recommended that it not be enacted. He stated:

> We are of the view that S. 2187 raises a number of constitutional questions of such substance that at the very least its effectiveness is very likely to be impaired by prolonged litigation. These questions relate primarily to the due process clause of the Fifth Amendment and the scope of the privilege against self-incrimination. Conceivably, First Amendment problems might also be raised since that amendment relates to freedom of association in non-political as well as in political organiaztions. A principal purpose of S. 2187 as I understand it is to deprive the leaders of the Mafia and of similar syndicates of the service of the underlings through whom they operate. That objective can I hope be achieved through the continued use of such statutes as 18 U.S.C. 371, which makes it unlawful to conspire to violate any federal law, and 18 U.S.C. 1952 which outlaws interstate travel in aid of racketeering enterprises.

Mr. Chairman, enactment of the provisions of S. 30 will certainly assure that that objective may be achieved without the necessity of attempting to make Mafia membership itself a crime.

The curious objection has been raised to S. 30 as a whole, and to several of its provisions in particular, that they are not somehow limited to organized crime—as if organized crime were a precise and operative legal concept, like murder, rape, or robbery. Actually, of course, it is a functional or sociological concept like white collar or street crime, serving simply as a shorthand method of referring to a large and varying group of individual criminal offenses committed in diverse circumstances.

Nevertheless, this line of analysis has a certain superficial plausibility. But if we make a closer examination we see that it is seriously defective in several regards. Initially, it confuses the occasion for reexamining an aspect of our system of criminal justice with the proper scope of any new lesson derived from that reexamination. For example, our examination of how organized crime figures have achieved immunity from legal accountability led us to examine the sentencing practices and powers of our Federal courts. There we found that now our Federal judges, unlike State judges, have no statutory power to deal with organized crime leaders as habitual offenders and give them extended prison terms. Having noted the lack of habitual offender provisions by considering one class of cases, we obviously learned that it was lacking in other classes, too. Is there any good reason why we should not move to meet that need across the board?

The objection, moreover, has practical as well as theoretical defects. Even as to titles of S. 30 needed primarily in organized crime cases, there are very real limits on the degree to which such provisions can be strictly confined to organized crime cases. Many of those provisions, such as title I, deal with the process of investigating and collecting evidence. When an investigation begins, one cannot expect the police to be able to demonstrate a connection to organized crime, or even to know that a connection exists. It is only at the conclusion of the investigation that organized crime involvement can be shown and verified. Therefore, to require a general showing that organized crime is involved as a predicate for the use of investigative techniques would be to cripple those techniques.

Lastly, and most disturbingly, however, this objection seems to imply that a double standard of civil liberties is permissible. S. 30 is objectionable on civil liberties grounds, it is suggested, becasue its provisions have an incidental reach beyond organized crime. Coming from those concerned with civil liberties in particular, this objection is indeed strange. Have they forgotten that the Constitution applies to those engaged in organized crime just as it applies to those engaged in white collar or street crime? S. 30 must, I suggest, stand or fall on the constitutional questions without regard to the degree to which it is limited to organized crime cases. If the bill violates the civil liberties of those engaged in organized crime, it is objectionable as

such. But if it does not violate the civil liberties of those who are engaged in organized crime, it does not violate the civil liberties of those who are not engaged in organized crime, but who nonetheless are within the incidental reach of provisions primarily intended to affect organized crime.

Although I do not criticize, by implication or otherwise, the gentleman's motivation, I must oppose the amendment.

The CHAIRMAN. For what purpose does the gentleman from Illinois rise?

Mr. ANNUNZIO. Mr. Chairman, I move to strike out the requisite number of words.

The CHAIRMAN. The gentleman is recognized for 5 minutes.

Mr. ANNUNZIO. I yield to my distinguished friend from New York (Mr. BIAGGI).

Mr. BIAGGI. I thank the gentleman from Illinois (Mr. ANNUNZIO).

The CHAIRMAN. The time of the gentleman from Illinois has expired. He has become seated.

Mr. MOSS. Mr. Chairman, I move to strike the last word.

The CHAIRMAN. The gentleman from California is recognized for 5 minutes.

Mr. MOSS. Mr. Chairman, first, I want to state my high regard for the distinguished gentleman in the well. But I would like to ask him what constitutes Italian ancestry? Must all parents and grandparents be of Italian origin or Italian ancestry? What happens when there is an admixture of, let us say, Irish or English, Jewish, or any of the other racial or ethnic groups? What do you mean by Italian ancestry? An Italian name?

Mr. BIAGGI. An Italian name is one thing. Actually, if you go through the whole list and roster, you will not find any but Italian names in that compilation of families and statistics. Of course, we do have intermarriages, but, for the most part, an Italian name is a fair basic rule. The Department of Justice knows what we are talking about. We are talking about ancestry. We are talking about origin; whether it be an Italian name or a name of another type I do not think is binding.

Mr. MOSS. I, of course, agree with the remarks of the distinguished chairman of the committee and the gentleman from Virginia, the very distinguished ranking member or the manager of the committee on the minority side. This is a matter of great concern to me. It would place a stigma upon persons having Italian names. I have far too many close personal friends, far too many constructive constituents of Italian ancestry who would not want to see this kind of brand ever frozen into the statutes of the United States, even though ultimately, as I am confident it would be, it might be stricken down by the courts.

Mr. BIAGGI. Mr. Chairman, will the gentleman yield?

Mr. MOSS. I yield to the gentleman from New York.

Mr. BIAGGI. That is exactly the point. There is an infinitesimal number of wrongdoers in this country. We have had them for decades. There are 22 million Americans of Italian origin, law-abiding citizens, who would like to have the lawless element removed from the face of the Nation. The Government has failed, Congress has failed, America has failed. I realize this is an extreme remedy, but we have a serious malady and it must be dealt with.

Mr. MOSS. Mr. Chairman, I decline to yield further. I realize the deep emotional response the gentleman has, and I think there has been much unfair characterization of the Italian people. But I do not think that this amendment would cure it at all. I think it would aggravate the situation very considerably, and with all the deference I can give the gentleman in recognition of his strong emotional ties and the righteous outrage he expresses, I still say this is the wrong approach, and I urge that the amendment not be adopted.

I yield to the gentleman from Pennsylvania.

Mr. DENT. Mr. Chairman, will the gentleman yield?

Mr. MOSS. I yield to the gentleman from Pennsylvania.

Mr. DENT. Mr. Chairman, as I understood the gentleman in the well, I think his intent is one that should be considered. However, sometimes the medication is worse than the disease. I am of Italian extraction, but by the grace of God and an Irishman who could not spell, my name became Dent and not Dente. It was an Irish foreman who just knocked the ending from the name of my grandfather, an Italian name, and it became Dent.

However, I do not believe we can step aside from the fact that the gentleman made one statement that the FBI has these lists. If, as the gentleman from New York says, the FBI has these lists, and there are a small minority, then in my opinion those who do indulge in this must be a small minority of Americans, all Americans. However, if the FBI has these lists, why do we have to proceed with this kind of legislation, when they have the law enforcement within their hands? If the Department of Justice has the lists of these people, the violators, and they have records on them, why does not the Department act?

Mr. BIAGGI. Mr. Chairman, will the gentleman yield?

Mr. MOSS. I yield to the gentleman from New York.

Mr. BIAGGI. Mr. Chairman, that is exactly the point. The law enforcement people do not have the means to go after them. This amendment, if adopted, would make membership in such an organization a crime, and law enforcement could proceed against them.

Mr. DENT. What does the gentleman give as a criteria for membership—just because of Italian ancestry?

Mr. BIAGGI. Obviously no.

Mr. DENT. That is the only definition in here.

Mr. BIAGGI. The definition I provide in the bill is language stated by the Attorney General of the United States, Mr. Mitchell.

Mr. DENT. Yes; I read that.

Mr. BIAGGI. Let me read from the remarks of Mr. Hoover in 1963.

The CHAIRMAN. The time of the gentleman from California has expired.

Mr. DENT. Mr. Chairman, I move to strike the necessary number of words.

Mr. Chairman, I yield to the gentleman from New York (Mr. BIAGGI).

Mr. BIAGGI. Mr. Chairman, Mr. Hoover said in 1963:

"La Cosa Nostra", the secret, murderous underworld combine . . . is no secret to the F.B.I. For several years, it can now be revealed, our agents have penetrated its workings and its leadership. We have learned how it works, where it gets its money, who runs it and makes its decisions, where it is going, how it has changed and is changing from its beginnings 45 years ago to the present day.

In 1969, in testimony before the House Subcommittee on Appropriations, Mr. Hoover stated:

Our investigations reflect that in the La Cosa Nostra organization there are 26 separate "families" with membership approximating 3,000. These 3,000 in turn control the criminal activities of many times their own number.

Mr. DENT. Yes; I read that.

Mr. BIAGGI. We have a list of 26 families.

Mr. DENT. That is right. I read that. However, does it not seem to the gentleman when he selects just one group, and in the eyes of this particular Member at least, the identification is that they are persons of Italian ancestry? If I remember reading the historical papers called "The Valachi Papers," and I read "The Godfather" and the whole family including the grandmother and the sisters-in-law and all the rest coming from the Valachi papers, I found there was a Jewish outfit in New York that was a parallel to the five families controlling New York. If Members do not believe me, read the Valachi papers. Then there was another group under "Butcher" Buchwald, where I come from, that is not an Italian name.

I do not see that there is anything in the Attorney General's statement that would say he does not want to wipe out this delusion of ours that only persons of Italian extraction are in organized crime. I would say the jails of the United States and the prisons have 10 or 20 to 1 who are not of Italian extraction who belong to an organized body of crime.

What is an organized body of crime? It is any organization that meets together and agrees together to violate the law. The numbers writers in most of our communities are not of Italian extraction, and that is considered to be organized crime and an organized violation of law.

If the gentleman would change that and say anybody who belongs to organized crime shall get this kind of treatment, it would be more applicable. The wording used when there is an article in the papers about Mr. Italian saying he is a member of the Mafiosi, and Cosa Nostra, or whatever you want to call it, saying that he is alleged to be a member.

Under this act he is not a member of organized crime. It is somebody trying to write a story saying the man is alleged to be.

If there is a desire to blacken a man, it is easy to do so. I want to say I ap-

preciate the sincere depth of the feelings of the gentleman from New York, who is one of the best known and was probably one of the straightest law-enforcement agents in the city of New York for many years, and one whom I have admired for many years.

But sometimes, I must say, in our zeal to do something we believe to be good we may be harming a lot of people, a whole lot of people.

There are 26 families, the gentleman says. I do not know how many there are. I have read the books, and most of them are novels. Most of them are now taken from the Valachi papers, and all of them are making a good deal of money.

I can name some, from Puzo's book. I can name the men he is trying to picture in that book, out of the Valachi papers. And, if the gentleman will give the families, I can name the families, because they are so closely related in the stunts and tricks they pull, according to Valachi.

Certainly in the days of prohibition there were serious law violations, and it has continued in a more or less degree. But if there are only 26 families, and the gentleman puts their identity in the RECORD, for goodness sake, the FBI can arrest them, if that is what they want to do.

Name them, but do not cover everybody with the same tar and the same feathers.

Mr. BIAGGI. Mr. Chairman, will the gentleman yield?

Mr. DENT. I yield to the gentleman from New York.

Mr. BIAGGI. In connection with the "alleged" aspect of it, that is incorporated in my amendment.

Mr. DENT. How?

Mr. BIAGGI. On page 2 of my amendment are the words:

Declare a person to be a member of, or an alleged member of, a Mafia or a La Cosa Nostra organization.

If it is untrue, they are exposed to the same civil liabilities.

Mr. DENT. Not in a newspaper. The gentleman says when a charge is made by a professional police officer of the country, but he is not saying the newsmen. The freedom of the press will certainly come above any amendment like that, any day of the week.

Mr. BIAGGI. The language is:

Whoever orally or through the use of radio, television, movies, newspapers, magazines, books, letters.

Et cetera, et cetera. We have that included.

The gentleman said that if we enact this we will hurt a number of people. I suggest very strongly that the failure on the part of the Congress to act will hurt to an even greater degree 22 million Americans of Italian origin.

Let us go even further.

Mr. DENT. I am sorry I do not have more time, but with special permission I should like to say I have never felt hurt, because I have never participated in it.

The CHAIRMAN. The time of the gentleman from Pennsylvania has expired.

The question is on the amendment offered by the gentleman from New York (Mr. BIAGGI).

The amendment was rejected.

AMENDMENT OFFERED BY MR. STEIGER OF ARIZONA

Mr. STEIGER of Arizona. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. STEIGER of Arizona: On page 129, line 11, insert ", without regard to the amount in controversy," after "jurisdiction".

On page 130, lines 23 and 24, insert "subsection (a) of" after "under" each time it appears.

On page 130, line 23, strike "action" and insert in lieu thereof "proceeding".

On page 133, lines 6 to 16, strike subsections (c) and (d) and insert in lieu thereof:

"(c) Any person may institute proceedings under subsection (a) of this section. In any proceeding brought by any person under subsection (a) of this section, relief shall be granted in conformity with the principles which govern the granting of injunctive relief from threatened loss or damage in other cases. Upon the execution of proper bond against damages for an injunction improvidently granted and a showing of immediate danger of irreparable loss or damage, a preliminary injunction may be issued in any action before a determination thereof upon its merits.

"(d) Whenever the United States is injured in its business or property by reason of any violation of section 1962 of this chapter, the Attorney General may bring a civil action in a district court of the United States, without regard to the amount in controversy and shall recover the actual damages sustained by it, and the cost of the action.

"(e) Any person who is injured in his business or property by reason of any violation of section 1962 of this chapter may bring a civil action in a district court of the United States, without regard to the amount in controversy, and shall recover threefold the actual damages sustained by him, and the cost of the action, including a reasonable attorney's fee.

"(f) The Attorney General may upon timely application intervene in any civil action or proceeding brought under this chapter, if the Attorney General certifies that in his opinion the case is of general public importance. In such action or proceeding, the United States shall be entitled to the same relief as if it had instituted the action or proceeding.

"(g) A final judgment or decree rendered in favor of the United States in any criminal or civil action or proceeding under this chapter shall estop the defendant in any subsequent civil proceeding as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto.

"(h) Except as hereinafter provided, any civil action under this section shall be barred unless it is commenced within five years after the cause of action accrued. Whenever any civil or criminal action or proceeding, other than an action under subsection (d) of this section, is brought or intervened in by the United States to prevent, restrain, or punish any violation of section 1962 of this chapter the running of the period of limitations prescribed by this subsection with respect to any cause of action arising under subsections (c) and (e) of this section, which is based in whole or in part on any matter complained of in such action or proceeding by the United States, shall be suspended during the pendency of such action or proceeding by the United States and for two years thereafter."

Mr. CELLER (during the reading). Mr. Chairman, we have no copy of the amendment. Is there a copy in existence?

The CHAIRMAN. Does the gentleman from Arizona have a spare copy of the amendment?

The Chair will advise the gentleman, it is customary to furnish the chairman and the ranking minority member of a committee with copies of amendments. However, in this instance the amendment was printed in the CONGRESSIONAL RECORD for yesterday, October 6, at page H9685.

PARLIAMENTARY INQUIRY

Mr. HALL. A parliamentary inquiry, Mr. Chairman.

The CHAIRMAN. The gentleman will state it.

Mr. HALL. For what purpose does the Clerk read the amendment?

The CHAIRMAN. It is the understanding of the Chair, and has been for all through the years, that the Clerk reads the amendment so that the Members may intelligently vote upon it.

Mr. CELLER. Mr. Chairman, I make the point of order that inasmuch as the ranking majority and minority members of the committee were not served with the amendment and the rules require that it be furnished, a point of order is well made to the amendment.

Mr. GROSS. Mr. Chairman, a parliamentary inquiry. Has the amendment been read?

The CHAIRMAN. The Chair desires to respond to the distinguished gentleman from New York (Mr. CELLER).

The Chair must confess that the Chair knows of no such rule in the rules of procedure of the House of Representatives.

The Clerk will continue to read the amendment.

The Clerk concluded the reading of the amendment.

The CHAIRMAN. The gentleman is recognized for 5 minutes in support of his amendment.

Mr. STEIGER of Arizona. Thank you, Mr. Chairman.

I feel very presumptuous about offering an amendment to a Judiciary Committee effort, particularly of this magnitude. I want to make it very clear that I do not claim specific expertise nor a superior expertise. I think the committee produced a genuinely fine document in their effort against organized crime, one that was not overcome by emotion, and so forth. This is a very specific amendment which I have reference to. It is not a figment of my imagination nor a desire to attract some attention.

Mr. Chairman, this amendment has been endorsed by the American Bar Association, it has been endorsed by people who are familiar with the detailed specifics, vis-a-vis jurisprudence in this very narrow field.

Now, in effect, what this amendment does is tell the Judiciary Committee, at least in my view, if nothing else, that they have done an excellent job in permitting the judicial use of those remedies currently enjoyed under the antitrust laws in which a civil action may be filed.

Mr. POFF. Mr. Chairman, will the gentleman yield?

Mr. STEIGER of Arizona. I would be

happy to yield to the distinguished gentleman from Virginia?

Mr. POFF. Mr. Chairman, I want to pay special tribute to the gentleman in the well for having raised the issue which his amendment defines. It does offer an additional civil remedy which I think properly might be suited to the special mechanism fashioned in title IX. Indeed, I am an author of an almost identical amendment. It has its counterpart almost in haec verba in the antitrust statutes, and yet I suggest to the gentleman that prudence would dictate that the Judiciary Committee very carefully explore the potential consequences that this new remedy might have in all the ramifications which this legislation contains and for that reason, I would hope that the gentleman might agree to ask unanimous consent to withdraw his amendment from consideration with the understanding that it might properly be considered by the Judiciary Committee when the Congress reconvenes following the elections or some other appropriate time.

Mr. STEIGER of Arizona. I thank the gentleman for his suggestion.

I would like to believe that I do not have to be run over by a tank to get the word.

However, Mr. Chairman, I want to make it very clear that the record we are making here is a record of signifiance. It is the intent of this body, I am certain, to see that innocent parties who are the victims of organized crime have a right to obtain proper redress. It is a rather simple approach and one I am sure we can all support under the bill as it now stands they may have this option. I am convinced under the language proposed by this amendment they will have the option. Really, insofar as I am concerned it is just that simple. But rather than risk, maybe, confusion and perhaps defeat in the heat of parochial pride as regards the authorship of this amendment, I am going to make the unanimous-consent request as suggested by the gentleman from Virginia whose significant help and guidance in my decision on this is apparent to everyone. But I would like to make it very clear that this is worthy of separate legislation when we do return in the fall or next year. It represents the one opportunity for those of us who have been seriously affected by organized crime activity to recover.

Mr. Chairman, I ask unanimous consent that I be permitted to withdraw the amendment at this time.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

There was no objection.

Mr. GOLDWATER. Mr. Chairman, I move to strike the requisite number of words.

(Mr. GOLDWATER asked and was given permission to revise and extend his remarks.)

Mr. GOLDWATER. Mr. Chairman, I would like to rise as one of the Members of this body to commend this committee ond its distinguished chairman for this much needed legislation on which they have labored hard and which we are considering today.

I was prepared to offer an amendment which I am sure would have the support of all the Members of the House. This amendment would be called the President's award for distinguished law enforcement. In effect, this would be an award presented by the President, in the name of the President and the Congress of the United States, to Federal, State, and local law-enfcrcement officers, including correction officers, for extraordinary valor in the line of duty or for exceptional contribution in the field of law enforcement. However, I have decided not to offer the amendment at this time in order to keep within the intent of the committee and because of a question of germaneness. This amendment will be offered in the other body to another more appropriate piece of legislation which the House has already acted upon.

The United States of America has long prided itself on recognition of outstanding performance by its citizens, both on the field of battle and for service to the country at home. Two of the most widely known awards, for example, are the U.S. Medal of Honor and the Freedom Award.

Just recently our astronauts were, most deservedly, given special medals by the President as recognition for their perilous journey to the moon and back.

Let us look now at another group of individuals—men who face danger and imminent death every single working day, day in and day out, men who must make split second decisions on their own, decisions on which rest their own lives and the lives of many others.

I am talking, of course, about our law-enforcement officers.

These officers bear the huge burden of keeping the peace, of maintaining the law and order for which the American public cries out. How do they do this?

They walk the streets of some cities with the knowledge that a bullet may snuff out their lives at any minute. They pull over a speeding car—which just happens to contain a criminal who opens fire on them. They try to calm domestic quarrels, the participants in which may turn on them with knives or bottles. They spend long and arduous hours as accountants, tax lawyers, and tracers in an effort to follow the flow of moneys from illegal organized crime into legitimate enterprise, and then must watch helplessly as consumers pay the price of criminal control.

And what awaits them when the actual "working day" is over? Hours spent writing up reports so that some day, some time in the future, another policeman may find his man a little faster. The knowledge that their home life may be interrupted by an emergency call back to duty at any hour of the day or night. The even more terrifying knowledge that some criminal whom they have apprehended may decide to take vengeance on their wives and children. A paycheck which is far too low, considering the hours worked and the danger involved.

Their rewards for these conditions? Epithets such as "pig" and "fascist" spat at them in the streets. Refusal to cooperate or get involved on the part of the ordinary citizen. Charges of police brutality every time a person resists arrest and force must be used to subdue him. The anger of the ordinary citizen who always feels the police should be out catching real criminals instead of picking on him when he breaks the law.

Is it not about time that Congress shows it cares about this dedicated group of men? Is it not time we exercised our leadership and showed that the United States has maintained its tradition of awards for outstanding service? Is it not long past time that we recognized the fight against crime on an individual basis, rather than as a mass of statistics?

Is it not time we recognized individual law-enforcement officials who have put forth an extraordinary effort to fight crime and aid their fellow citizens?

The President's Award for Distinguished Law Enforcement Service would provide the recognition that our police richly deserve. It would show that we care, that the United States of America cares, that action above and beyond the call of duty is still recognized in this country.

It would also serve notice on criminals and racketeers that they can no longer rely on the low status and lack of cooperation afforded the police as shields for their activities.

For the sake of our country, for the sake of a dedicated group of individuals, for the sake of the battle against crime, I am hopeful this recognition will be favorably considered by the conferees and thus establish the President's Award for Distinguished Law Enforcement Service.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

TITLE X—DANGEROUS SPECIAL OFFENDER SENTENCING

SEC. 1001. (a) Chapter 227, title 18, United States Code, is amended by adding at the end thereof the following new sections:

"§ 3575. Increased sentence for dangerous special offenders

"(a) Whenever an attorney charged with the prosecution of a defendant in a court of the United States for an alleged felony committed when the defendant was over the age of twenty-one years has reason to believe that the defendant is a dangerous special offender such attorney, a reasonable time before trial or acceptance by the court of a plea of guilty or nolo contendere, may sign and file with the court, and may amend, a notice (1) specifying that the defendant is a dangerous special offender who upon conviction for such felony is subject to the imposition of a sentence under subsection (b) of this section, and (2) setting out with particularity the reasons why such attorney believes the defendant to be a dangerous special offender. In no case shall the fact that the defendant is alleged to be a dangerous special offender be an issue upon the trial of such felony, be disclosed to the jury, or be disclosed before any plea of guilty or nolo contendere or verdict or finding of guilty to the presiding judge without the consent of the parties. If the court finds that the filing of the notice as a public record may prejudice fair consideration of a pending criminal matter, it may order the notice, sealed and the notice shall not be subject to subpena or public inspection during the pendency of such criminal matter, except on order of the court, but shall be subject to inspection by the defendant alleged to be a dangerous special offender and his counsel.

"(b) Upon any plea of guilty or nolo contendere or verdict or finding of guilty of the defendant of such felony, a hearing shall be held, before sentence is imposed, by the court sitting without a jury. The court shall fix a

time for the hearing, and notice thereof shall be given to the defendant and the United States at least ten days prior thereto. The court shall permit the United States and counsel for the defendant, or the defendant if he is not represented by counsel, to inspect the presentence report sufficiently prior to the hearing as to afford a reasonable opportunity for verification. In extraordinary cases, the court may withhold material not relevant to a proper sentence, diagnostic opinion which might seriously disrupt a program of rehabilitation, any source of information obtained on a promise of confidentiality, and material previously disclosed in open court. A court withholding all or part of a presentence report shall inform the parties of its action and place in the record the reasons therefor. The court may require parties inspecting all or part of a presentence report to give notice of any part thereof intended to be controverted. In connection with the hearing, the defendant and the United States shall be entitled to assistance of counsel, compulsory process, and cross-examination of such witnesses as appear at the hearing. A duly authenticated copy of a former judgment or commitment shall be prima facie evidence of such former judgment or commitment. If it appears by a preponderance of the information, including information submitted during the trial of such felony and the sentencing hearing and so much of the presentence report as the court relies upon, that the defendant is a dangerous special offender, the court shall sentence the defendant to imprisonment for an appropriate term not to exceed twenty-five years and not disproportionate in severity to the maximum term otherwise authorized by law for such felony. Otherwise it shall sentence the defendant in accordance with the law prescribing penalties for such felony. The court shall place in the record its findings, including an identification of the information relied upon in making such findings, and its reasons for the sentence imposed.

"(c) This section shall not prevent the imposition and execution of a sentence of death or of imprisonment for life or for a term exceeding twenty-five years upon any person convicted of an offense so punishable.

"(d) Notwithstanding any other provision of this section, the court shall not sentence a dangerous special offender to less than any mandatory minimum penalty prescribed by law for such felony. This section shall not be construed as creating any mandatory minimum penalty.

"(e) A defendant is a special offender for purposes of this section if—

"(1) the defendant has previously been convicted in courts of the United States, a State, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, any political subdivision, or any department, agency or instrumentality thereof for two or more offenses committed on occasions different from one another and from such felony and punishable in such courts by death or imprisonment in excess of one year, for one or more of such convictions the defendant has been imprisoned prior to the commission of such felony, and less than five years have elapsed between the commission of such felony and either the defendant's release, on parole or otherwise, from imprisonment for one such conviction or his commission of the last such previous offense or another offense punishable by death or imprisonment in excess of one year under applicable laws of the United States, a State, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, any political subdivision, or any department, agency or instrumentality thereof; or

"(2) the defendant committed such felony as part of a pattern of conduct which was criminal under applicable laws of any jurisdiction, which constituted a substantial source of his income, and in which he manifested special skill or expertise; or

"(3) such felony was, or the defendant committed such felony in furtherance of, a conspiracy with three or more other persons to engage in a pattern of conduct criminal under applicable laws of any jurisdiction, and the defendant did, or agreed that he would, initiate, organize, plan, finance, direct, manage, or supervise all or part of such conspiracy or conduct, or give or receive a bribe or use force as all or part of such conduct.

A conviction shown on direct or collateral review or at the hearing to be invalid or for which the defendant has been pardoned on the ground of innocence shall be disregarded for purposes of paragraph (1) of this subsection. In support of findings under paragraph (2) of this subsection, it may be shown that the defendant has had in his own name or under his control income or property not explained as derived from a source other than such conduct. For purposes of paragraph (2) of this subsection, a substantial source of income means a source of income which for any period of one year or more exceeds the minimum wage, determined on the basis of a forty-hour week and a fifty-week year, without reference to exceptions, under section 6(a)(1) of the Fair Labor Standards Act of 1938 (52 Stat. 1602, as amended 80 Stat. 838), and as hereafter amended, for an employee engaged in commerce or in the production of goods for commerce, and which for the same period exceeds fifty percent of the defendant's declared adjusted gross income under section 62 of the Internal Revenue Act of 1954 (68A Stat. 17, as amended 83 Stat. 655), and as hereafter amended. For purposes of paragraph (2) of this subsection, special skill or expertise in criminal conduct includes unusual knowledge, judgment or ability, including manual dexterity, facilitating the initiation, organizing, planning, financing, direction, management, supervision, execution or concealment of criminal conduct, the enlistment of accomplices in such conduct, the escape from detection or apprehension for such conduct, or the disposition of the fruits or proceeds of such conduct. For purposes of paragraphs (2) and (3) of this subsection, criminal conduct forms a pattern if it embraces criminal acts that have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events.

"(f) A defendant is dangerous for purposes of this section if a period of confinement longer than that provided for such felony is required for the protection of the public from further criminal conduct by the defendant.

"(g) The time for taking an appeal from a conviction for which sentence is imposed after proceedings under this section shall be measured from imposition of the original sentence.

"§ 3576. Review of sentence

"With respect to the imposition, correction, or reduction of a sentence after proceedings under section 3575 of this chapter, a review of the sentence on the record of the sentencing court may be taken by the defendant or the United States to a court of appeals. Any review of the sentence taken by the United States shall be taken at least five days before expiration of the time for taking a review of the sentence or appeal of the conviction by the defendant and shall be diligently prosecuted. The sentencing court may, with or without motion and notice, extend the time for taking a review of the sentence for a period not to exceed thirty days for the expiration of the time otherwise prescribed by law. The court shall not extend the time for taking a review of the sentence by the United States after the time has expired. A court extending the time for taking a review of the sentence by the United States shall extend the time for taking a review of the sentence or appeal of the conviction by the defendant for the same period. The taking of a review of the sentence by the United States shall be deemed the taking of a review of the sentence and an appeal of the conviction by the defendant. Review of the sentence shall include review of whether the procedure employed was lawful, the findings made were clearly erroneous, or the sentencing court's discretion was abused. The court of appeals on review of the sentence may, after considering the record, including the entire presentence report, information submitted during the trial of such felony and the sentencing hearing, and the findings and reasons of the sentencing court, affirm the sentence, impose or direct the imposition of any sentence which the sentencing court could originally have imposed, or remand for further sentencing proceedings and imposition of sentence, except that a sentence may be made more severe only on review of the sentence taken by the United States and after hearing. Failure of the United States to take a review of the imposition of the sentence shall, upon review taken by the United States of the correction or reduction of the sentence, foreclose imposition of a sentence more severe than that previously imposed. Any withdrawal or dismissal of review of the sentence taken by the United States shall foreclose imposition of a sentence more severe than that reviewed but shall not otherwise foreclose the review of the sentence or the appeal of the conviction. The court of appeals shall state in writing the reasons for its disposition of the review of the sentence. Any review of the sentence taken by the United States may be dismissed on a showing of abuse of the right of the United States to take such review.

"§ 3577. Use of information for sentencing

"No limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence.

"§ 3578. Conviction records

"(a) The Attorney General of the United States is authorized to establish in the Department of Justice a repository for records of convictions and determinations of the validity of such convictions.

"(b) Upon the conviction thereafter of a defendant in a court of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof for an offense punishable in such court by death or imprisonment in excess of one year, or a judicial determination of the validity of such conviction on collateral review, the court shall cause a certified record of the conviction or determination to be made to the repository in such form and containing such information as the Attorney General of the United States shall by regulation prescribe.

"(c) Records maintained in the repository shall not be public records. Certified copies thereof—

"(1) may be furnished for law enforcement purposes on request of a court of law enforcement or corrections officer of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof;

"(2) may be furnished for law enforcement purposes on request of a court or law

enforcement or corrections officer of a State, any political subdivision, or any department, agency, or instrumentality thereof, if a statute of such State requires that, upon the conviction of a defendant in a court of the State or any political subdivision thereof for an offense punishable in such court by death or imprisonment in excess of one year, or a judicial determination of the validity of such conviction on collateral review, the court cause a certified record of the conviction or determination to be made to the repository in such form and containing such information as the Attorney General of the United States shall by regulation prescribe; and

'(3) shall be prima facie evidence in any court of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof, that the convictions occurred and whether they have been judicially determined to be invalid on collateral review.

"(d) The Attorney General of the United States shall give reasonable public notice, and afford to interested parties opportunity for hearing, prior to prescribing regulations under this section."

(b) The analysis of chapter 227, title 18, United States Code, is amended by adding at the end thereof the following new items:

"3575. Increased sentence for dangerous special offenders.

"3576. Review of sentence.

"3577. Use of information for sentencing.

"3578. Conviction records."

SEC. 1002. Section 3148, chapter 207, title 18, United States Code, is amended by adding "or sentence review under section 3576 of this title" immediately after "sentence".

Mr. CELLER (During the reading). Mr. Chairman, I ask unanimous consent that title X be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

AMENDMENT OFFERED BY MR. DENNIS

Mr. DENNIS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. DENNIS: page 147, line 22, strike out the words "or the United States";

Strike out all that part of line 23 following the period after the word "appeals" in said line 23;

Strike out all of lines 24 and 25

Page 148, strike out all of line 1;

Strike out from the beginning of line 2 through the word "prosecuted" proceeding the period in said line 2;

Strike out the words "the court" at the end of line 5;

Strike out lines 6 through 13, inclusive, in their entirety;

Strike out line 25 and substitute therefor the following: "may not be made more severe upon review than that previously imposed."

Page 149, strike out all of lines 1 through 13, inclusive, in their entirety and insert in lieu thereof the following: "The court of appeals shall state in writing the reasons for its disposition of the review of the sentence."

Renumber the remaining lines and pages accordingly.

The CHAIRMAN. The gentleman from Indiana (Mr. DENNIS) is recognized.

(Mr. DENNIS asked and was given permission to revise and extend his remarks.)

Mr. DENNIS. Mr. Chairman, what this amendment does is simply to strike out of title X, the "Dangerous Special Offender Sentencing" title, the provision for appeal by the Government of the United States. That is what it does—that is all it does.

Title X in general provides, as the committee knows, that if the U.S. district attorney files a notice with the court saying that a defendant in a particular criminal prosecution is a dangerous special offender—as that is rather broadly defined in this bill—that thereafter if the defendant is convicted of the felony charged against him, there is a separate hearing before the court, sitting without a jury, to determine whether or not this man is in fact such a dangerous special offender.

If the court so finds, the court shall sentence him up to 25 years—although the offense to begin with might perhaps take only a penalty of 2 or 3 years.

That in itself is a sufficiently vigorous and rigorous section which has definite constitutional and policy questions in it. But it goes beyond that. It further provides that the defendant or the Government may take an appeal from that position. If the Government appeals, either from a decision by the trial court that the man is not in fact a special offender and is not subject to this procedure, or from the sentence imposed—on appeal by the Government, as the bill is drawn, the court of appeals can reverse the finding by the trial court that the man is not a special offender subject to these provisions—or if he was sentenced, the court of appeals may increase the penalty.

Now that is a provision that is practically unknown, so far as I know, to our jurisprudence heretofore. It does contain very serious constitutional questions in my judgment dealing with double jeopardy and with due process of law.

This is particularly true in my opinion if the trial court makes a finding that this man is not a special offender and is not subject to this extra sentence. Because then you have a finding—you have a finding that he is not such an offender. Yet, you retry that question of fact on appeal before the court of appeals, without a jury and on the record itself, which can contain probation reports and hearsay of that kind. You come very close to retrying the man after he has been once acquitted, and I think that is double jeopardy under the Constitution, and I doubt that it is due process of law.

In addition to these constitutional considerations, we have a very serious policy consideration, because the Government, if it wanted to, could use this procedure to chill a perfectly legitimate appeal. The Government could say, "Well, you take an appeal from the sentence, we will take one, and maybe increase your penalty." The Government could even say, "If you take an appeal from your original conviction, we will file one of these notices." The defendant may have a perfectly legitimate ground for an appeal from his original conviction, and I do not think he should be subjected to that hazard. He should not have to take that risk in order to prosecute that appeal.

I know the temper of the House, I think, and I know the fate of amendments today, and the way this has been going. But I just suggest to the Members that you do not have to abdicate everything you know, or vacate commonsense, for anybody's program. I am suggesting to you that this is not an extreme amendment. It is a very, very mild, very conservative amendment. As a matter of fact, I am trying to save the constitutionality of this bill, and I think if the amendment were adopted, I might be able to do so, as far as title X is concerned; and the people supporting the bill, as I do—and I am going to vote for the bill regardless of what happens to my amendment, as I said earlier—ought to be supporting this amendment, because it is an amendment that would greatly help to make this bill conform to the Constitution of the United States.

The CHAIRMAN. For what purpose does the gentleman from Virginia rise?

Mr. POFF. Mr. Chairman, I rise in most vigorous opposition to the amendment.

The CHAIRMAN. The gentleman from Virginia is recognized.

Mr. POFF. Mr. Chairman, I hope that no one will be beguiled by the fluency and the erudition of my distinguished friend from Indiana. The amendment most certainly is not an inconsequential amendment. On the contrary, it is far-reaching in its impact, and I most urgently implore that it be defeated.

It is argued that to give the Government the right to appeal the judge's finding that the defendant is not a dangerous special offender is to put the defendant twice in jeopardy. The case cited most often in support of this argument is Green against United States.

The Green case is good law, but it has no relevance to the sentencing and appellate review provisions of title X.

Green holds that the double jeopardy clause forbids the relitigation of an acquittal of the greater related offense—first degree murder—when the defendant has been convicted of a lesser included offense—second degree murder.

The Green decision would be relevant only if finding the defendant a special offender is the equivalent of a conviction for a separate offense and a negative finding the equivalent of an acquittal. But it is not. On the contrary, the finding of special offender criteria is nothing more than a finding that the defendant deserves a greater sentence than is ordinarily available. It is the same kind of finding the judge is required to make under the law today when, following a jury verdict of guilty, he sets about to determine whether to impose the maximum sentence or some lesser sentence. In making the determination, the judge today considers information—not evidence but information—concerning mitigating or aggravating circumstances. Special offender criteria simply spell out one form of aggravating circumstances which justifies a higher sentence.

Accordingly, the double jeopardy clause does not forbid the appellate court from reversing the trial court's finding

that the defendant is not a special offender.

Mr. CELLER. Mr. Chairman, will the gentleman yield?

Mr. POFF. I yield to the distinguished Chairman.

Mr. CELLER. I wish at this point to embrace the argument that the gentleman from Virginia is making in opposition to the pending amendment.

Mr. POFF. I thank the gentleman.

Let me say at this point that opponents make three arguments about sentence increases: First, that an appellate court increase in the trial judge's sentence violates the due process clause; second, that it violates the double jeopardy clause; and third, that the threat of a sentence increase discourages defendants from seeking appellate review.

Opponents cite in support of the due process argument the case of *North Carolina* v. *Pearce*, 395 U.S. 711 (1969). Pearce holds that due process forbids exposing a defendant who appeals his conviction to the risk of a sentence increase unless the increase is justified by misconduct following the initial sentencing. For two reasons, Pearce is inapplicable to a title X defendant. First, title X does not permit the appellate court to increase the sentence on the defendant's appeal. Second, the requirement in Pearce that an increase in sentence must be predicated upon misconduct following the initial sentencing was designed to protect the defendant from a vindictive trial judge. The Pearce case involved a retrial following reversal and remand. Reversed trial judges might be tempted to impose a higher sentence in the second trial. But in the title X situation, there is no temptation to vindictiveness. Title X involves only appellate judges reviewing the propriety of the initial sentence.

As for the double jeopardy argument, it is sufficient to quote only one sentence from the Pearce decision:

> Long-established constitutional doctrine makes clear that, * * * the guarantee against double jeopardy imposes no restrictions upon the length of a sentence imposed upon reconviction.

With respect to the third argument, it must first be clearly understood that title X does not give the Government the right to appeal an acquittal. The Government can appeal only a negative finding on the special offender charge and the propriety of the sentence imposed. Yet, it is said that the potential for government appeal and the possibility of a sentence increase will frighten the defendant out of taking an appeal.

Not so. The Government's right to take a sentence review must be exercised at least 5 days before expiration of the defendant's appeal deadline, but it is argued that the Government will subvert that safeguard simply by filing an appeal in every case. For three reasons, the Government will do no such thing. First, title X specifically provides that the Government appeal can be dismissed on a showing of abuse on the right of review. Second, title X specifically provides that if the Government takes an appeal and later withdraws it, the sentence cannot be increased. Third, title X specifically provides that an appeal by the Government will automatically become a full defendant's appeal as well; the Government is not likely to file an intimidation appeal if the Appellate Court is thereby empowered not only to reduce the sentence but to reverse the conviction itself.

Mr. CONYERS. Mr. Chairman, I rise in support of the amendment.

(Mr. CONYERS asked and was given permission to revise and extend his remarks.)

Mr. DENNIS. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from Indiana.

Mr. DENNIS. Mr. Chairman, if the gentleman from Virginia will answer me, I would like to ask this question. Will the gentleman agree that there surely is a distinction between a case where the trial court has had a hearing and found that the man is not a special offender at all and a case where the court is merely determining an appropriate sentence? When in the first case the court of appeals is retrying those questions of fact, it is not simply a question of determining an appropriate sentence. The question then is whether the defendant is a special offender.

Mr. POFF. If the gentleman will yield, bearing on the question, of course, is the propriety of the judge's refusal or consent to consider the information offered. That most properly should be subject to review by the appellate court.

Mr. DENNIS. I would not say I am certain this is unconstitutional. The point I am making is that there is a very serious constitutional question. These provisions cannot be equated with a mere sentencing procedure, which, I think, was the suggestion made in the gentleman's previous remarks.

Mr. POFF. Mr. Chairman, if the gentleman will yield again, I hope my friend, the gentleman from Indiana, does not misinterpret anything I have said. I have not in any way intended to challenge the good faith of his argument. It is a most respectable argument. It is a matter about which reasonable men can reasonably disagree, and I respectfully disagree with the gentleman's argument.

Mr. DENNIS. If the gentleman will yield further, I will say the same regarding the argument of my good friend, the gentleman from Virginia. But I likewise must respectfully disagree.

Mr. CONYERS. Mr. Chairman, we have had a discussion of what has been characterized by a friend of mine on the Judiciary Committee as a very conservative amendment. I want to go on record as supporting this conservative amendment. I think it tries to add some validity to the question of constitutionality. I think he has handled it very well. A number of us have been disturbed about this particular feature, but I think the question goes beyond the question of constitutionality.

I should like for us to remember, that is the lowest limit for us to consider. If it is a matter of being constitutional or unconstitutional, that is a very easy question for us to examine. But the question of policy has been introduced. On that score I believe there can be very little room for debate.

I believe the introduction of this opportunity for the U.S. attorney to appeal will without doubt work an irreparable injury on the defendant's right to appeal. It is clearly a harassing technique that is now being introduced into Federal law to be made applicable in all Federal jurisdictions without really too much examination on the part of those Members who will have to be called on to answer this.

We do not need it. We do not need it because the problem in acquiring more and heavier sentencing does not turn upon this right to appeal. The judges can sentence to the full limits of the sentencing within the range of the crime committed.

What we are doing here is opening up a way to preclude Federal criminal appeals on the part of the defendant, and it will in no way help reduce the corrupt criminal activity that goes on.

My friend from Virginia is at least not at the present time relying on a case we have discussed as recently as 2 weeks ago, when the special dangerous offenders subject came up on another bill; that is to say, the case of Williams against New York. I am happy to hear at least at this point it is not being relied on.

The CHAIRMAN. The time of the gentleman from Michigan has expired.

Mr. WIGGINS. Mr. Chairman, I rise in opposition to the amendment.

(Mr. WIGGINS asked and was given permission to revise and extend his remarks.)

Mr. POFF. Mr. Chairman, will the gentleman yield?

Mr. WIGGINS. I yield to the gentleman from Virginia.

Mr. POFF. I thank the gentleman for yielding.

I merely wanted an opportunity to respond to the point urged by my friend from Michigan concerning the possibility that the procedures outlined in this title somehow chill a defendant's desire to perfect an appeal. There are safeguards carefully written into the title which negate that argument.

First of all, the Government's right to take a sentence review must be exercised at least 5 days before expiration of the defendant's appeal deadline.

It is also argued by my friend that the Government will somehow subvert that safeguard simply by filing an appeal in every case. For three reasons the Government will do no such thing.

First, title X specifically provides that the Government appeal can be dismissed on a showing of abuse of that right.

Second, title X specifically provides that if the Government takes the appeal and later withdraws it, then the sentence cannot be increased.

Third, title X specifically provides that an appeal by the Government will automatically become a full defendant's appeal as well. I make the point that the Government is not likely to file an intimidation appeal if the appellate court is thereby empowered not only to reduce the sentence but also to reverse the conviction for the felony as well. I say that the gentleman's fear is not well founded.

Mr. DENNIS. Mr. Chairman, will the gentleman yield?

Mr. WIGGINS. I yield briefly to the gentleman from Indiana.

Mr. DENNIS. I should like to point out that it is obvious, if the gentleman will forgive me, that this governmental right to appeal is a club over the head of the defendant when he contemplates appeal.

This has concerned other people. I am not alone in this. I should like to quote from the commentary by the Advisory Committee of the American Bar Association, on Standards Relating to Appellate Review of Sentences. The commentary says:

A much more serious problem could be created by giving the state the power to seek an increase on appeal. The existence of such power could well have the effect of preventing the defendant from appealing even on the merits of his conviction. The ability to seek an increase could be a powerful club, the very existence of which—even assuming its good faith use—might induce a defendant to leave well enough alone.

Now, I am not suggesting that is an official position of the American Bar Association. I understand, as the gentleman from Virginia has advised me, that the latest action of that organization is a vote of the Board of Governors approving title X. Nevertheless, this is a commentary by a very skillful committee of that association appointed to establish standards for this very question. The point I am making is that a lot of conservative lawyers like myself feel this way about it.

Mr. POFF. Mr. Chairman, will the gentleman yield to me?

Mr. WIGGINS. I am glad to yield to the gentleman from Virginia.

Mr. POFF. In response to what the gentleman said, I think it would be appropriate, under leave granted on yesterday, Mr. Chairman, to insert the remarks which I made in general debate yesterday a tthis point in the RECORD. Those remarks include the text of a letter dated October 2, addressed to me by the president of the American Bar Association, which indeed says that the American Bar Association does endorse the procedure of title X, including the opportunity for the Government to obtain an increase.

The letter is as follows:

AMERICAN BAR ASSOCIATION,
*Washington, D.C., October 2, 1970.*

RICHARD H. POFF,
*House of Representatives,*
*Washington, D.C.*

DEAR CONGRESSMAN POFF: This letter is submitted in response to the request which you made of Mr. Donald E. Channell, Director of our Washington, D.C. office, concerning the provisions of Title X of "The Organized Crime Control Act of 1969" upon which I testified before Subcommittee No. 5 of the House Judiciary Committee.

As I understand it, your inquiry had specific reference to the position of the American Bar Association regarding those provisions of Title X which authorized the Government to take review of a sentence and obtain an increase upon such appeal. This particular point was brought up in my testimony at page 483 of the typewritten transcript. Additionally, I elucidated the ABA position by furnishing amplification in my letter of September 11, 1970 to Chairman Celler, which was in response to a request to supply a further statement concerning certain discussions which occurred during my testimony.

I believe the complete answer to your inquiry would be contained in the material beginning on page 4 and ending on page 5 of my letter to Congressman Celler. For your ready reference I quote that portion herein:

"The provisions of title X which authorize the government to take review of a sentence and obtain an increase are fully supported by the ABA, which proposes no amendments to those provisions. It is true, as I tried to indicate in response to questions of the committee counsel during my testimony, that the *Standards for Criminal Justice* of the ABA do not themselves offer affirmative support for the concept of government review of sentencing. (Type-written transcript at 483.) It is equally true, on the other hand, that the *Standards* support sentence increase on review taken by a defendant, and are silent on the question whether review and increase at the instance of the government should be permitted. (Project on Minimum Standards for Criminal Justice, *Standards Relating to Appellate Review of Sentences* § § 3.2, 3.3 (Approved Draft, 1968).)

The commentary to the *Standards on Appellate Review of Sentences* suggests disapproval of appellate review of sentences at the instance of the government. (*Id.* at 56, Supplement at 3.) The commentary, however, has not been approved by the Board of Governors or the House of Delegates of the ABA, and does not state ABA policy.

The decision made by the ABA when the *Standards on Appellate Review of Sentences* were adopted, to endorse sentence increase on review taken by a defendant and to take no position on review taken by the government, was made on the assumption that case law existing at that time established the constitutionality of sentence increase on review taken by a defendant, but did not answer the question of the constitutionality of review taken by the government. On that assumption, the position taken by the *Standards* seemed the surest way of providing that sentences would be open to increase on review, and was adopted by the ABA. Subsequently, however, the Supreme Court decided two cases (*Price* v. *Georgia,* 7 Crim. L. Rptr. 3103 (1970); *North Carolina* v. *Pearce,* 395 U.S. 711 (1969)) strongly indicating that sentence review at the instance of the government as provided in title X is constitutional.

It was with those cases in mind, as well as earlier decisions (*e.g., Green* v. *United States,* 355 U.S. 184 (1957); *Kepner* v. *United States,* 195 U.S. 100 (1904)), that the Board of Governors adopted its position on the appellate review provisions of title X. The resolution adopted by the Board, which already is in the record of the Subcommittee's hearings, makes no reference to the *Standards on Appellate Review of Sentences,* and approves title X's appellate review provisions without exception or amendment. That approval of sentence increase on sentence review taken by the government constitutes the sole occasion on which the ABA has taken a position on that issue, and unequivocally supports the concept as well as the specific provisions of title X. There is thus no difference between title X as passed by the Senate and ABA policy concerning appellate review of sentences at the instance of the government."

The foregoing, of course, is based upon S. 30 as it passed the Senate. I am not aware of what changes, if any, might have been made by the House Judiciary Committee with regard to the particular provision of Title X on which your question was based. However, I am assuming that if there were any changes they would not alter the principle on which the above quoted material is based.

Sincerely,

EDWARD L. WRIGHT.

Mr. WIGGINS. Mr. Chairman, I will yield to the gentleman from Michigan at the conclusion of my remarks, which I assure you will be very brief.

I oppose this amendment by my colleague from Indiana on the Judiciary Committee, and it pains me a bit to do so, because I know him to be a very competent constitutional scholar. He raises some difficult constitutional questions that bother me, but constitutional questions are seldom, if ever, easily resolved.

I think the membership should know a full committee of lawyers, all good constitutional scholars, have given a great deal of thought to this subject and have resolved that the approach taken by the committee is good law.

Let me say at the crux of the matter, in my opinion, is the view on which some people hold different opinions; namely, whether or not the post-conviction procedure constitutes a separate offense. If a party holds the view that the special offender sentencing provision is a separate offense, then certain legal consequences flow from that. If, on the other hand, one takes the view that it is really part of the sentencing procedure for the principal offense, then other consequences flow. It is my opinion that the question is not free from doubt, but under all of the circumstances the latter view is the better.

Mr. RYAN. Mr. Chairman, I support the amendment for the reasons I set forth yesterday in my remarks; and I commend the gentleman from Indiana for having recognized the very grave constitutional questions involved in granting the Government the right to appeal not only the term of a sentence but a trial court's finding that a defendant is not a dangerous special offender.

I yield to the gentleman from Michigan for any comments he desires to make.

Mr. CONYERS. May I point out that the committee from which the gentleman from Indiana quoted involving the American Bar Association was the committee that studied this provision. They were unhappy with title X. The letter that the gentleman from Virginia cites—and we all acknowledge very clearly that the American Bar Association has gone on record as endorsing it—is from the president of the ABA and is not supportive of the bar committee views quoted by the gentleman from Indiana. They are two different legal viewpoints.

Mr. POFF. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. Not at this point.

I would point out that the reservations of the committee within the ABA still obtain. The leadership in their letter have decided apparently to do something differently.

Mr. POFF. Will the gentleman yield for a correction?

Mr. CONYERS. I cannot right now.

The CHAIRMAN. The Chair would like to advise that the gentleman from New York (Mr. RYAN) has the floor.

The CHAIRMAN. Does the gentleman from New York yield to the gentleman from Virginia for a question?

Mr. RYAN. Mr. Chairman, I have

yielded to the gentleman from Michigan and, when he has completed his statement, I shall be glad to yield to the gentleman from Virginia.

Mr. CONYERS. I thank the gentleman from New York.

Mr. Chairman, I think it is about time that in the welter of Supreme Court cases and prior opinions that have been cited about title X, I am happy to say that the Members at least acknowledge that this is a knotty constitutional question.

The whole issue of special offender sentencing has never been reviewed directly by a court; neither the Supreme Court or any other court has ever ruled on this question. There is no precedent for special offender sentencing, except through certain recidivist statutes that exist in State law. So, the lawyers of the bar are in disagreement about it and I might state further that all of the cases that any member of the judiciary committee may cite are only by indirection.

We have never had a judicial ruling. I think the gentleman from Indiana is very properly concerned because the special offender sentencing is without precedent.

Now, with reference to the Williams against New York case, a U.S. Supreme Court case cited by the gentleman from Virginia only a week before last, was a case handed down in 1941. I asked the gentleman for the citation as I recall and I am happy to report to him and to the other Members that that case has been reviewed 3 years ago by the Supreme Court in the case of Specht against Patterson. By analogy it suggests that the rules of evidence that have been fashioned for criminal trials narrowly confine the trial to evidence that is strictly relevant to the particular offense charged. A sentencing judge, however, is not confined to the narrow issue of guilt. And his task, within fixed statutory limits is to determine the type and extent of punishment after the case has been determined. That, it seems to me, is the distinction that we are trying to make.

I submit to you that the special offenders sentencing provision is one which is in effect a second trial which can impose up to 25 years.

The CHAIRMAN. The time of the gentleman from New York (Mr. RYAN) has expired.

Mr. SMITH of New York. Mr. Chairman, I move to strike the requisite number of words.

(Mr. SMITH of New York asked and was given permission to revise and extend his remarks.)

Mr. POFF. Mr. Chairman, will the gentleman yield?

Mr. SMITH of New York. I shall be glad to yield to the gentleman from Virginia.

Mr. POFF. Mr. Chairman, *Specht* v. *Patterson*, 386 U.S. 605 (1967), is not relevant to the dialog that preceded this colloquy. I quote specifically from page 608 of that decision: "We adhere to Williams against New York, supra."

The Court in Specht made that point after quoting at length from the opinion in the Williams case.

But with respect to the point made earlier by the gentleman in connection with the American Bar Association, the letter to which I made reference is from the president of the American Bar Association. However, in the letter reference is made to the resolution adopted on July 15 by the Board of Governors of the American Bar Association which specifically and unequivocally endorsed title X, including the right of review by the Government and the right of increase of sentences upon review by the Government.

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. SMITH of New York. I yield to the gentleman from Michigan.

Mr. CONYERS. May I point out to my friend from Virginia that neither the president of the American Bar Association nor the board of governors that made that decision constituted the committee that the gentleman from Indiana cites. It is the committee whose language that disturbs him as well as me who studied the provisions and brought them to the board of governors which then resulted in the president of the American Bar Association issuing the letter that the gentleman from Virginia cites.

Mr. POFF. The gentleman from Michigan is correct. The language cited by the gentleman from Indiana was from the commentary to the Standards Relating To Appellate Review of Sentences and was not an official recommendation. That is to say, it was not approved either directly or indirectly by the house of delegates of the American Bar Association or by the board of governors of the American Bar Association, or for that matter any other official unit of the American Bar Association. It was a commentary of the scholars reporting the view of the committee, as the gentleman says.

Mr. DENNIS. Mr. Chairman, will the gentleman yield?

Mr. SMITH of New York. I yield to the gentleman from Indiana.

Mr. DENNIS. Mr. Chairman, I thank the gentleman for yielding so that I may get back into this very interesting discussion.

I would like to say that I beileve that it is not a question of whether or not you should have title X at all, which my friend, the gentleman from Michigan (Mr. CONYERS), is posing. That question must be answered by determining whether title X is more analogous to Williams against New York than it is to Sprecht against Patterson.

But the thrust of my amendment is less sweeping. That is why I say that although I agree that it is important, it is rather mild. For I do not try to strike title X. I try only to eliminate the Government's right to appeal. That is all. This is a mild, conservative approach.

If you give the Government one "bite" at proving that a man is a dangerous special offender to imprison him for up to 25 years, why should the Government, when it fails, be able to go up to the court of appeals and do it all over again on a cold record? That is my point.

Mr. SMITH of New York. Mr. Chairman, I urge that this amendment be voted down.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Indiana (Mr. DENNIS).

The question was taken; and on a division (demanded by Mr. DENNIS) there were—ayes 23, noes 40.

So the amendment was rejected.

AMENDMENT OFFERED BY MR. ECKHARDT

Mr. ECKHARDT. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. ECKHARDT: Amend S. 30 by striking the dash at the end of line 15 on page 144 and "(1)" at the beginning of line 16 on the same page; by striking lines 12 through 24 on page 145; by striking on page 146 at the end of line 4 the words "In support" and all of lines 5 through 25 on that page; and by striking lines 1 through 13 on page 147.

Mr. ECKHARDT. Mr. Chairman, what this amendment does is to strike those elements of what is called the dangerous special offenders sentencing provision, which call for proof of additional facts before the court without a jury and without the defendant ever having an opportunity to have had the case adjudicated before a jury.

You will recall in general debate that the author of the language in title X, the gentleman from Virginia (Mr. POFF) had explained to us there were two ways in which this special sentencing procedure is activated. First, by showing that the defendant has been engaged in crimes which resulted in convictions in court under certain provisions, and second, establishing the existence of another set of activating forces that include additional factual elements constituting the basis for the sentencing.

It is with respect to this second group of activating facts that I quarrel because with respect to this second group, there is never an opportunity for a jury trial. I maintain that this is unconstitutional and I think there is absolutely no doubt that the Constitution preserves to a person the right to try every element of that which will make his sentence a greater one than it could have been under the crime for which he was convicted.

I want to explain what the Williams case holds and what it does not hold. The Williams case is a murder case. Therefore, in the Williams case the court had the entire sweep of sentencing that a murder conviction invokes, all the way to the death penalty.

Let us imagine the kind of case that would have been authority for the proposition that the distinguished gentleman from Virginia seeks to support under the Williams case. If the Williams case were apposite, it would have had to deal with facts very different from those it actually involved. Williams would have been convicted, say, of manslaughter. Let us say, he got into a fight in an apartment flat and carried the fight to the point where his opponent was completely subdued and he stomped his opponent after which the man died. Perhaps the maximum sentence for that would be 20 years for manslaughter.

Now does anyone for a moment believe the Supreme Court would have upheld a State statute or a Federal statute, for that matter, which permitted the judge to listen to evidence to the effect that Williams in that fight was in the course of committing felony burglary and, therefore, because the homicide occurred in the course of a felony that he is now guilty of murder and the court may then elevate the sentence to the death penalty? If that were what the Williams case involved—if those were the facts of the Williams case, then the case would support the proposition he cites it for: That additional and new facts to support another kind of crime and another kind of punishment would be permitted to be proved without a jury, without cross-examination and without confrontation.

But those were not the facts of the Williams case. All that the Williams case said is that when a man is convicted before a jury of an offense for which the judge could give a sentence of death in the first place, can hear matters which determines whether or not he will give the maximum sentence or some lesser sentence. It does not permit the judge to elevate the nature of the crime or to activate a new kind of broader sentence or a new kind of category in which the accused is placed so that he can receive a greater sentence than that applicable to the crime of which he was found guilty by the jury.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas (Mr. ECKHARDT).

The amendment was rejected.

Mr. ICHORD. Mr. Chairman, I move to strike the requisite number of words.

The CHAIRMAN. The gentleman from Missouri is recognized.

Mr. ICHORD. Mr. Chairman and Members of the Committee, the measure that we have before us this afternoon is a long and complicated bill designed to increase the capability of the Federal Government to effectively combat organized crime within the Nation. I share some of the doubts that have been expressed about this measure as to the efficacy and the propriety of some of its provisions, and I do want to subject them to close examination. But the measure over all appears to me to be an earnest and a sincere effort to meet a very difficult problem for which I congratulate the chairman, the ranking member, and the members of the Judiciary Committee.

I do not consider the arguments valid that have been projected against the bill by some of the opposition to the effect that it does not bore in on the problem of crime in the streets, and that the committee is using the passions of the moment to pass an unconstitutional, far-reaching measure. This, as I stated, is a bill dealing with organized crime, and the opponents well know that the Federal Government is quite limited in any direct approach boring in on the problem of crime on the streets, if we are going to preserve the principle that the primary responsibility for the keeping of the peace lies with local law-enforcement officials. The Federal Government could possibly move into the field of keeping the peace in St. Louis, Chicago, New York, and so forth, but it does no good to pass a law if you do not enforce it. To enforce such laws we would need a national police force and if we create a national police force a great deal of what this country is all about will have been lost.

Mr. Chairman, although most of the ways that the Federal Government can concentrate in on crime in the streets are indirect methods and procedures, such as providing financial support for training and research programs, there are a few direct steps we can and should take. I had in mind offering an amendment in that direction, but I have checked with the Parliamentarian and he advises me that the amendment would probably be out of order, and I agree. I, Mr. Chairman, am very much concerned about the increasing assaults upon police officers throughout the Nation.

During the 10-year period 1960 to 1969 there were 561 law enforcement officers feloniously murdered while protecting life and property. In 1969, the last year for which complete statistics are available, there were 35,202 assaults on police officers, 11,949 resulting in injury. Eighty-six police officers, a 34-percent increase over 1968, were killed. I had hoped to offer an amendment which would adopt the approach of the Federal kidnapping law bringing Federal apprehensive facilities into play, but still preserving the principle that law-enforcement is the primary responsibility of the local officials.

I think the Federal kidnapping law is a valid and proper approach, one of the direct methods which can be followed by the Federal Government.

I would ask the chairman of the committee, does the committee have underactive consideration in the committee now—since I cannot offer the amendment to this bill—any measure that would directly or indirectly help to alleviate the problem of crime in the streets.

Mr. CELLER. The committee has a number of bills of the import the gentlemen just spoke of. Many police officers have been assaulted or slain, and quite a number of bills have been offered making it a Federal offense to kill a policeman while in line of duty.

We are considering these matters. On the other hand, when we do consider bills of that sort, we must correlate that with the idea of how far we shall go in establishing Federal crimes. The Judiciary Committee has proposals to connect State crimes to Federal crimes. The question is how far shall we go in developing a Federal police state. That is the troublesome problem.

The CHAIRMAN. Are there any further amendments to title X?

Mr. MIKVA. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, it would appear we are getting near a vote on final passage of this bill. Those who have been here for the debate in the committee are aware that even the proponents of this bill find it less than perfect. I am sure some Members will save their conscionces by saying that, after all, the constitutionality of some of these disputed provisions can be determined by the courts. It seems to me a little unfair to dump that whole burden on the courts, since they are less able to protect themselves and their forum is less efficacious than ours. We, too, take an oath to protect and uphold the Constitution, and we have a burden equal to theirs, if not greater.

But more than that, I intend to vote against this bill, because I think it is so deceitful in terms of the impact it is going to have on the concerns and desires of our people. Most people think that this bill is going to do something about the problem that scares them off the streets in Chicago and Detroit and New York and Washington. Most people think this bill is going to make them more secure in their homes. But, as we have heard during the debate, even the proponents do not suggest it has much to do with that.

What happens when the bill is passed and signed into law, and when the people are not any more secure on the streets of Chicago or Detroit or Washington or New York? We will have cut one more strand in that skein of credibility that ought to exist between the government and its people. I do not think we have too many strands left in that skein. If we promise and do not deliver, if we pretend to deliver something to the people and do not, then we are just going to give sustenance and comfort and support to those who would like to see this country destroyed.

Mr. ICHORD. Mr. Chairman, will the gentleman yield?

Mr. MIKVA. I yield to the gentleman from Missouri.

Mr. ICHORD. Mr. Chairman, I agree with the gentleman that we are setting up extraordinary measures and vehicles to solve the problems created by organized crime, but does the gentleman not believe that organized crime within the Nation does present a problem of sizeable proportions?

Mr. MIKVA. I certainly do, and I would welcome and vigorously support a bill that really acted to attack organized crime. The tragedy is this bill, aside from the false colors under which it masquerades, does not do anything about organized crime. Its overreach and its unconstitutionality are not the only defects. The bill may catch some little minnows, but I doubt that it will catch many big fish.

It will not get the big criminals or the street criminals, but it will deal a large blow to the government's credibility.

Mr. ICHORD. Mr. Chairman, I do support the measure, because I consider the problem to be one of major proportions. I would hope it does attack the problem, and I would have gone even further in attacking the problem of organized crime.

I do wish however that the committee had adopted an expiration date for the extraordinary vehicles that have been set up, treating it as emergency measure to meet emergency conditions. I am concerned that the committee has chosen to establish the novel and extraordinary agencies such as the special grand jury

in the permanent law. I do share some of the concern of the gentleman about the unconstitutionality of some of its provisions and the possible abuse of extraordinar powers granted to certain individuals and agencies.

Mr. MIKVA. I do not think we can suspend the Constitution for a temporary period.

Let me say in closing, I again pay my respects to the chairman and the other members of the committee. I realize the difficulty of their task. The bill which came from the Senate was in fact worse than this bill. The committee faced the Hobson's choice of voting for this bill or the Senate bill, which is like asking the question, "How would you like the Constitution to be destroyed: by fire or by water?"

I do not believe that is a realistic choice. It is one that I will not make.

Mr. YATES. Mr. Chairman, will the gentleman yield?

Mr. MIKVA. I yield to the gentleman from Illinois.

Mr. YATES. The gentleman has made an eloquent and persuasive speech. I join him in his views in opposition to this bill.

Mr. Chairman, it is difficult to vote against a bill which states in its title that it seeks to control organized crime. Certainly, everyone here is in favor of that goal but, unfortunately, in the name of seeking to control organized crime it goes much too far in violating the fundamental rights of American citizens.

I must say, Mr. Chairman, that I wanted to vote for this bill because the burgeoning crime rate must be brought within bounds. But this bill will not provide security in the streets. It will not permit American citizens to move freely in their communities at night without fear. It will not fight muggings, or burglaries, or robberies, or assaults. It will not provide the measures that are necessary to build and better police forces and detection methods or to catch the hardened criminal, which should be the object of our search for effective measures to deal with this problem.

Beginning with the first title which discriminates unfairly in favor of elected officials as opposed to appointed officials whereas certainly both should be the subject with which the grand jury should deal, it moves through various titles, some of which are good and for which I would have voted had they been in another bill, until we came upon certain titles which place enormous powers in the Attorney General, excessive powers, I believe, and provides as well for trial and appellant procedures which to my mind clearly violate the Constitution of the United States.

It is difficult to comment at length on all the bad provisions in this bill. It is loosely drawn in opposition to the basic rule that criminal legislation should be specific and definite, and there will be gapping holes in the net with which it seeks to achieve its purpose of capturing those engaged in organized crime. There is no definition of organized crime. Through all encompassing definitions, it invades the field of local crime fighting by making Federal crimes that have traditionally been local ones.

Much has been said on both sides about title X which relates to special offender sentencing. I am in favor of defining crimes clearly in our statutes and providing strict penalties for their violation. That is not what title X does. It provides for penalties for crimes far beyond those in the appropriate statutes. It gives the power to the judge to punish beyond those statutes. In effect, the procedure for imposing the extra penalty is not a part of the sentencing process, but rather it is procedure which imposes a penalty by the judge upon the defendant for a crime for which he has not been tried.

The appellate procedure set forth which authorizes the Government to appeal the length of a special offender sentence and have it increased is without precedent. Such procedure will place a barrier on the defendant's right of appeal by making it subject to the Government's demand for an increased sentence over that pronounced by the trial court.

I find particularly disturbing title IX which gives enormous power to the Attorney General, to issue civil investigative demands requiring the production of documentary material whenever he "has reason to believe" that material would be useful to an investigation of racketeering. He is not required to obtain court approval for a search of any person's records. Such broad and sweeping language should not be given to any person, no matter how beneficent he is. In the words of the old truism, "A good man will not need it and a bad man should not have it." This is the broad and sweeping language of the section:

(a) Whenever the Attorney General has reason to believe that any person or enterprise may be in possession, custody, or control of any documentary materials relevant to a racketeering investigation, he may, prior to the institution of a civil or criminal proceeding thereon, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to produce such material for examination.

Under this language, the Attorney General may, under claim of conducting a racketeering investigation, invade the privacy of any firm or individual and demand to see their books and records, no matter how remote they may be from any connection with racketeering. Certainly, this language authorizes the most flagrant kind of fishing expeditions.

It is claimed that this is language taken from the antitrust laws. That may be true, Mr. Chairman, but that language applies to civil procedures, not to criminal ones. There is now no right to search or seizure in the criminal law without first having obtained the approval of the court.

For these reasons, Mr. Chairman, and for a number of others, I have decided to vote against the bill. I have carefully read the bill and the report, I have listened to the debate all day, and I cannot in good conscience vote for it. Legislation, I know, is a procedure of compromise. No bill is perfect and the good provisions must be weighed against the bad ones to determine whether one's vote is cast for or against the bill. In this case, even though I favor the purposes of the bill, I find its provisions do not foster its purposes. I think the committee will have to do much better than this vehicle if it wants to fight crime.

(Mr. YATES asked and was given permission to revise and extend his remarks.)

Mr. LOWENSTEIN. Mr. Chairman, will the gentleman yield?

Mr. MIKVA. I yield to the gentleman from New York.

[Mr. LOWENSTEIN addressed the Committee. His remarks will appear hereafter in the Extensions of Remarks.]

(Mr. LOWENSTEIN asked and was given permission to revise and extend his remarks.)

Mr. KOCH. Mr. Chairman, will the gentleman yield?

Mr. MIKVA. I yield to the gentleman from New York.

(Mr. KOCH asked and was given permission to revise and extend his remarks.)

[Mr. KOCH addressed the Committee. His remarks will appear hereafter in the Extensions of Remarks.]

AMENDMENT OFFERED BY MR. CONYERS

Mr. CONYERS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. CONYERS: Strike all that follows from line 10, page 141, through line 24, page 151.

(Mr. CONYERS asked and was given permission to revise and extend his remarks.)

[Mr. CONYERS addressed the Committee. His remarks will appear hereafter in the Extensions of Remarks.]

Mr. POFF. Mr. Chairman, I rise in opposition to the amendment.

As the distinguished gentleman from Michigan has said, the arguments pro and con have been already rather elaborately articulated. I doubt that I can add anything to the record that has not already been said earlier. By way of summary, I will simply say that the pending amendment embraces the consequences of the Eckhardt amendment and the Dennis amendment, both of which have been previously rejected.

Accordingly, Mr. Chairman, I ask that the pending amendment be rejected.

Mr. STEIGER of Arizona. Mr. Chairman, will the gentleman yield to me?

Mr. POFF. I yield to the gentleman.

Mr. STEIGER of Arizona. I thank the gentleman for yielding.

I would simply like, as perhaps the only nonlawyer in the room at this moment listening to these very interesting arguments, recite an experience on a very pragmatic level that happened to me which could have happened to anybody in this body as a result of my very personal interest in this particular piece of legislation. I was not surprised to hear the gentleman from Pennsylvania, Mr. DENT, earlier imply that organized crime was somehow a fictional device. I am only respectful of the concern of the gentleman from Michigan, the gentle-

man from Indiana, the gentleman from Chicago, and the others who expressed real concern about the constitutional prerogatives that we are perhaps in some way abrogating here.

However, I will tell you that, as we know, in this country today, if a poor man's son commits a crime and a rich man's son commits the same crime, the chances are that the poor man's son will receive the full weight of justice and the rich man's son will either get off or receive a much lighter sentence. It is unfortunate, but this is a fact of life.

I will submit to all of you distinguished members of the bar that is exactly what happened with organized crime. It is a fact of life. Because of the sophistication, because of the wealth, and because of the ability of organized crime to keep the best counsel, they have been able to abrogate the law.

And so, in specific reference to the gentleman from Michigan's amendment it is clear to me that in the event a case has been tried and a conviction achieved it must be a very strong case indeed if that is of any ease to the gentleman's feelings in this matter, because I know they are genuine. In the case of organized crime at least if the case is ready for appeal and a conviction has been obtained, that has been a genuinely strong case because every legal device has been used to protect those participating in organized crime.

Mr. Chairman, for 9 months I have been attempting to call the attention of my State and the attention of other States to an organization known as Emprise headquartered in Buffalo, N.Y., but which does business through 600 corporate entities and which in my view represents organized crime. I have gotten nowhere, very frankly, because of the absence of legislation like this. This will be very important as far as this particular entity is concerned.

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. POFF. I yield to the gentleman from Michigan.

Mr. CONYERS. May I point out to my friend, for whom I have a certain amount of agreement, that the problem with special offender sentencing is that it will be open to far more than the organized criminal. As a matter of fact, it in no way limits it to organized criminal defendants. As I suggested, it opens it up to anyone. It can be subject to political abuse, it can be used for those who may hold unpopular views, it can be used to trigger actions under the antitrust law as well as the Federal Food and Drug Administration laws and a host of other laws.

Mr. STEIGER of Arizona. Mr. Chairman, if the gentleman from Virginia will yield further, I am not about to debate the specifics with anyone as competent as is the gentleman. I would only point out that the language, as I read it, refers to habitual, organized crime of professionals. I think that is fairly specific and represents at least an honest attempt on the part of the drafters of this legislation to avoid exactly what the gentleman fears.

Mr. ARENDS. Mr. Speaker, will the gentleman yield?

Mr. POFF. I am delighted to yield to the distinguished minority whip.

(Mr. ARENDS asked and was given permission to revise and extend his remarks.)

Mr. ARENDS. Mr. Chairman, it may be historic fiction that Nero fiddled while Rome burned; but it is a fact, not a fiction, that this 91st Congress has been fiddling for almost 2 years while our free society, founded on law and order and justice, is being destroyed by widespread crime and violence.

Only now, at long last, as this Congress approaches adjournment, are we responding to President Nixon's plea that we wage war against crime.

In his state of the Union address shortly after he took office in 1969 he said:

> We must declare and win the war against the criminal elements which increasingly threaten our cities, our homes and our lives.

It took this Congress over a year and a half to act on the President's recommended court reform and criminal procedure bill for the District of Columbia. He submitted his proposal in February of 1969. Not until July 29, 1970, did it become law.

On July 14, 1969, President Nixon recommended drug control legislation. It was only a few weeks ago—September 24, 1970, to be exact—over a year later that the House passed the Drug Abuse Prevention and Control Act now pending in the Senate.

On April 23, 1969, President Nixon sent the Congress a special message outlining a program to deal with organized crime. Only now, in the waning weeks of a Congress that has been in session for almost 2 years, do we have this vitally important measure before us.

I suppose we will simply have to say: "It is better late than never." But, Mr. Speaker, on what national problem should this Congress more promptly and decisively have acted than on this problem of lawlessness? As President Nixon said a year ago:

> There is no greater need in this free society than the restoration of the individual American's freedom from violence in his home and on the streets of the city or town. Control and reduction of crime are among the first and constant concerns of this Administration. But we can do little more unless and until Congress provides more tools to do the job. No crisis is more urgent in our society. No subject has been the matter of more legislative requests from this Administration.

The critical situation which confronts our country today is not of recent origin. Year after year, for almost a decade, crime has steadily increased. For the last several years—for all too many years—all too much emphasis has been placed on an individual's rights without regard to his responsibilities and without regard to the rights of society itself. The attitude has been one of permissiveness. For all too long those in authority have been passive about the need for remedial legislation to deal with the problem. Those in authority, including our Courts, have been so concerned about the rights of the criminal elements that they have completely ignored the rights of society itself.

Our free society of God-fearing, law-abiding people is fast becoming a lawless society. We have waited all too long to deal with this grave problem. Only now, after 10 years of permissiveness and apathy, is an all-out attempt being made to give our country new direction. The very survival of democracy demands respect for law and order.

The bill we have before us is a major step for dealing with "organized crime" which, as President Nixon has pointed out, had "deeply penetrated broad segments of American life." By this measure we will be giving the administration the legal tools it sorely needs to do the job that needs to be done to rid our society of those elements and those practices that are destroying it.

Members of the Judiciary Committee which reported this bill have discussed in detail what is proposed in each of the 12 titles of it. I shall not presume to repeat what has already been explained. But I do wish to commend the committee for its wisdom in including in the bill title XI which deals with the growing problem of explosives. I have especially noted that the definition of explosives has been broadened to include incendiary devices such as Molotov cocktails and that the scope of the law has been broadened to cover malicious damages by explosives of not only proposed use in interstate commerce but also damage to Federal premises or property of institutions receiving Federal financial assistance.

This bill should have the enthusiastic support of all Members of this House.

Important as this and other legislation relating to drug abuse and crime are for our maintaining law and order, I am not unmindful that a solution to the crime problem and lawlessness generally cannot be found solely in writing new laws and procedures, or in remedying conditions that breed crime. We need to change the philosophy that has been spreading across the country that freedom is an absolute right. If one were free to do everything he wishes, whenever he wishes and wherever he wishes, no one would be free to do anything. Freedom is ordered liberty under law.

Mr. RYAN. Mr. Chairman, I move to strike the requisite number of words.

(Mr. RYAN asked and was given permission to revise and extend his remarks.)

Mr. RYAN. Mr. Chairman, I rise in support of the amendment which has been offered by the gentleman from Michigan (Mr. CONYERS).

Title X attempts to disguise as a sentencing hearing on the felony for which a defendant is convicted what is really a separate proceeding to determine an issue "that was not an ingredient of the offense charged." (See *Specht* v. *Patterson*, 386 U.S. 605, 610 (1967)). By this device due process is bypassed, and the defendant is denied the right to trial by jury, confrontation, and cross-examination.

In one of the colloquies which took place this afternoon, the gentleman from Virginia (Mr. POFF) relied upon *Williams* v. *New York*, 337 U.S. 241, stating that the Court said in Specht against Patter-

son, supra, "We adhere to *Williams* v. *New York.*" However, the gentleman failed to read the entire sentence. The Court's full statement was "We adhere to *Williams* v. *New York, supra;* but we decline the invitation to extend it to this radically different situation." *Specht* v. *Patterson, supra,* 608. Specht presented "a radically different situation" than Williams—a situation analogous to the dangerous special offender provisions of title X. As the Court held in Specht, a defendant under title X should be entitled to the full panoply of due process guarantees.

In addition, by granting the Government the right to appeal the imposition of a sentence, title X violates the bar against double jeopardy. By granting the Government the right to appeal the length of a sentence, a defendant may be intimidated from taking an appeal.

The amendment to strike title X should prevail.

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. RYAN. I yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Chairman, we might at least understand what will be accomplished if we decide to eliminate title X. Based upon the remarks of the distinguished gentleman who assumes that this is a provision directed against organized criminal defendants, I would like the gentleman to know that title X authorizes special sentences of up to 25 years for any person convicted of a Federal felony and who is found by the sentencing judge to be a "dangerous special offender."

This term includes any person from whom the public needs the protection of an extended sentence and who has been convicted of two other past felonies or, has committed the present felony as a part of a criminal pattern of conduct. That does not address itself exclusively to persons who may have been participating in organized crime.

I share the gentleman's concern. It is because we have so completely overrun constitutional safeguards that I ask the Members of this body to join me in striking this entire untested and unreasonable provision from this bill.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Michigan (Mr. CONYERS).

The question was taken; and on a division (demanded by Mr. CONYERS) there were—ayes 21, noes 58.

So the amendment was rejected.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

TITLE XI—REGULATION OF EXPLOSIVES

PURPOSE

SEC. 1101. The Congress hereby declares that the purpose of this title is to protect interstate and foreign commerce against interference and interruption by reducing the hazard to persons and property arising from misuse and unsafe or insecure storage of explosive materials. It is not the purpose of this title to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, storage, or use of explosive materials for industrial, mining, agricultural, or other lawful purposes, or to provide for the imposition by Federal regulations of any procedures or requirements other than those reasonably necessary to implement and effectuate the provisions of this title.

SEC. 1102. Title 18, United States Code, is amended by adding after chapter 39 the following chapter:

"Chapter 40.—IMPORTATION, MANUFACTURE, DISTRIBUTION AND STORAGE OF EXPLOSIVE MATERIALS

"Sec.
"841. Definitions.
"842. Unlawful acts.
"843. Licensing and user permits.
"844. Penalties.
"845. Exceptions; relief from disabilities.
"846. Additional powers of the Secretary.
"847. Rules and regulations.
"848. Effect on State law.

"§ 841. Definitions

"As used in this chapter—

"(a) 'Person' means any individual, corporation, company, association, firm, partnership, society, or joint stock company.

"(b) 'Interstate or foreign commerce' means commerce between any place in a State and any place outside of that State, or within any possession of the United States (not including the Canal Zone) or the District of Columbia, and commerce between places within the same State but through any place outside of that State. 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States (not including the Canal Zone).

"(c) 'Explosive materials' means explosives, blasting agents, and detonators.

"(d) Except for the purposes of subsections (d), (e), (f), (g), (h), (i), and (j) of section 844 of this title, 'explosives' means any chemical compound mixture, or device, the primary or common purpose of which is to function by explosion; the term includes, but is not limited to, dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord, and igniters. The Secretary shall publish and revise at least annually in the Federal Register a list of these and any additional explosives which he determines to be within the coverage of this chapter. For the purposes of subsections (d), (e), (f), (g), (h), and (i) of section 844 of this title, the term 'explosive' is defined in subsection (j) of such section 844.

"(e) 'Blasting agent' means any material or mixture, consisting of fuel and oxidizer, intended for blasting, not otherwise defined as an explosive: Provided, That the finished product, as mixed for use or shipment, cannot be detonated by means of a numbered 8 test blasting cap when unconfined.

"(f) 'Detonator' means any device containing a detonating charge that is used for initiating detonation in an explosive; the term includes, but is not limited to, electric blasting caps of instantaneous and delay types, blasting caps for use with safety fuses and detonating-cord delay connectors.

"(g) 'Importer' means any person engaged in the business of importing or bringing explosive materials into the United States for purposes of sale or distribution.

"(h) 'Manufacturer' means any person engaged in the business of manufacturing explosive materials for purposes of sale or distribution or for his own use.

"(i) 'Dealer' means any person engaged in the business of distributing explosive materials at wholesale or retail.

"(j) 'Permittee' means any user of explosives for a lawful purpose, who has obtained a user permit under the provisions of this chapter.

"(k) 'Secretary' means the Secretary of the Treasury or his delegate.

"(l) 'Crime punishable by imprisonment for a term exceeding one year' shall not mean (1) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices as the Secretary may by regulation designate, or (2) any State offense (other than one involving a firearm or explosive) classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.

"(m) 'Licensee' means any importer, manufacturer, or dealer licensed under the provisions of this chapter.

"(n) 'Distribute' means sell, issue, give, transfer, or otherwise dispose of.

"§ 842. Unlawful acts

"(a) It shall be unlawful for any person—

"(1) to engage in the business of importing, manufacturing, or dealing in explosive materials without a license issued under this chapter;

"(2) knowingly to withhold information or to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive for the purpose of obtaining explosive materials, or a license, permit, exemption, or relief from disability under the provisions of this chapter; and

"(3) other than a licensee or permittee knowingly—

"(A) to transport, ship, cause to be transported, or receive in interstate or foreign commerce any explosive materials, except that a person who lawfully purchases explosive materials from a licensee in a State contiguous to the State in which the purchaser resides may ship, transport, or cause to be transported such explosive materials to the State in which he resides and may receive such explosive materials in the State in which he resides, if such transportation, shipment, or receipt is permitted by the law of the State in which he resides; or

"(B) to distribute explosive materials to any person (other than a licensee or permittee) who the distributor knows or has reasonable cause to believe does not reside in the State in which the distributor resides.

"(b) It shall be unlawful for any licensee knowingly to distribute any explosive materials to any person except—

"(1) a licensee;

"(2) a permittee; or

"(3) a resident of the State where distribution is made and in which the licensee is licensed to do business or a State contiguous thereto if permitted by the law of the State of the purchaser's residence.

"(c) It shall be unlawful for any licensee to distribute explosive materials to any person who the licensee has reason to believe intends to transport such explosive materials into a State where the purchase, possession, or use of explosive materials is prohibited or which does not permit its residents to transport or ship explosive materials into it or to receive explosive materials in it.

"(d) It shall be unlawful for any licensee knowingly to distribute explosive materials to any individual who:

"(1) is under twenty-one years of age;

"(2) has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;

"(3) is under indictment for a crime punishable by imprisonment for a term exceeding one year;

"(4) is a fugitive from justice;

"(5) is an unlawful user of marihuana (as defined in section 4761 of the Internal Revenue Code of 1954) or any depressant or stimulant drug (as defined in section 201 (v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4721(a) of the Internal Revenue Code of 1954); or

"(6) has been adjudicated a mental defective.

"(e) It shall be unlawful for any licensee

knowingly to distribute any explosive materials to any person in any State where the purchase, possession, or use by such person of such explosive materials would be in violation of any State law or any published ordinance applicable at the place of distribution.

"(f) It shall be unlawful for any licensee or permittee willfully to manufacture, import, purchase, distribute, or receive explosive materials without making such records as the Secretary may by regulation require, including, but not limited to, a statement of intended use, the name, date, place of birth, social security number or taxpayer identification number, and place of residence of any natural person to whom explosive materials are distributed. If explosive materials are distributed to a corporation or other business entity, such records shall include the identity and principal and local places of business and the name, date, place of birth, and place of residence of the natural person acting as agent of the corporation or other business entity in arranging the distribution.

"(g) It shall be unlawful for any licensee or permittee knowingly to make any false entry in any record which he is required to keep pursuant to this section or regulations promulgated under section 847 of this title.

"(h) It shall be unlawful for any person to receive, conceal, transport, ship, store, barter, sell, or dispose of any explosive materials knowing or having reasonable cause to believe that such explosive materials were stolen.

"(i) It shall be unlawful for any person—

"(1) who is under indictment for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

"(2) who is a fugitive from justice;

"(3) who is an unlawful user of or addicted to marihuana (as defined in section 4761 of the Internal Revenue Code of 1954) or any depressant or stimulated drug (as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4731(a) of the Internal Revenue Code of 1954); or

"(4) who has been adjudicated as a mental defective or who has been committed to a mental institution;

to ship or transport any explosive in interstate or foreign commerce or to receive any explosive which has been shipped or transported in interstate or foreign commerce.

"(j) It shall be unlawful for any person to store any explosive material in a manner not in conformity with regulations promulgated by the Secretary. In promulgating such regulations, the Secretary shall take into consideration the class, type, and quantity of explosive materials to be stored, as well as the standards of safety and security recognized in the explosives industry.

"(k) It shall be unlawful for any person who has knowledge of the theft or loss of any explosive materials from his stock, to fail to report such theft or loss within twenty-four hours of discovery thereof, to the Secretary and to appropriate local authorities.

"§ 843. Licenses and user permits

"(a) An application for a user permit or a license to import, manufacture, or deal in explosive materials shall be in such form and contain such information as the Secretary shall by regulation prescribe. Each applicant for a license or permit shall pay a fee to be charged as set by the Secretary, said fee not to exceed $200 for each license or permit. Each license or permit shall be valid for no longer than three years from date of issuance and shall be renewable upon the same conditions and subject to the same restrictions as the original license or permit and upon payment of a renewal fee not to exceed one-half of the original fee.

"(b) Upon the filing of a proper application and payment of the prescribed fee, and subject to the provisions of this chapter and other applicable laws, the Secretary shall issue to such applicant the appropriate license or permit if—

"(1) the applicant (including in the case of a corporation, partnership, or association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation, partnership, or association) is not a person to whom the distribution of explosive materials would be unlawful under section 842(d) of this chapter;

"(2) the applicant has not willfully violated any of the provisions of this chapter or regulations issued hereunder;

"(3) the applicant has in a State premises from which he conducts or intends to conduct business;

"(4) the applicant has a place of storage for explosive materials which meets such standards of public safety and security against theft as the Secretary by regulations shall prescribe; and

"(5) the applicant has demonstrated and certified in writing that he is familiar with all published State laws and local ordinances relating to explosive materials for the location in which he intends to do business.

"(c) The Secretary shall approve or deny an application within a period of forty-five days beginning on the date such application is received by the Secretary.

"(d) The Secretary may revoke any license or permit issued under this section if in the opinion of the Secretary the holder thereof has violated any provision of this chapter or any rule or regulation prescribed by the Secretary under this chapter, or has become ineligible to acquire explosive materials under section 842(d). The Secretary's action under this subsection may be reviewed only as provided in subsection (e)(2) of this section.

"(e)(1) Any person whose application is denied or whose license or permit is revoked shall receive a written notice from the Secretary stating the specific grounds upon which such denial or revocation is based. Any notice of a revocation of a license or permit shall be given to the holder of such license or permit prior to or concurrently with the effective date of the revocation.

"(2) If the Secretary denies an application for, or revokes a license, or permit, he shall, upon request by the aggrieved party, promptly hold a hearing to review his denial or revocation. In the case of a revocation, the Secretary may upon a request of the holder stay the effective date of the revocation. A hearing under this section shall be at a location convenient to the aggrieved party. The Secretary shall give written notice of his decision to the aggrieved party within a reasonable time after the hearing. The aggrieved party may, within sixty days after receipt of the Secretary's written decision, file a petition with the United States court of appeals for the district in which he resides or has his principal place of business for a judicial review of such denial or revocation, pursuant to sections 701–706 of title 5, United States Code.

"(f) Licensees and permittees shall make available for inspection at all reasonable times their records kept pursuant to this chapter or the regulations issued hereunder, and shall submit to the Secretary such reports and information with respect to such records and the contents thereof as he shall by regulations prescribe. The Secretary may enter during business hours the premises (including places of storage) of any licensee or permittee, for the purpose of inspecting or examining (1) any records or documents required to be kept by such licensee or permittee, under the provisions of this chapter or regulations issued hereunder, and (2) any explosive materials kept or stored by such licensee or permittee at such premises. Upon the request of any State or any political subdivision thereof, the Secretary may make available to such State or any political subdivision thereof, any information which he may obtain by reason of the provisions of this chapter with respect to the identification of persons within such State or political subdivision thereof, who have purchased or received explosive materials, together with a description of such explosive materials.

"(g) Licenses and permits issued under the provisions of subsection (b) of this section shall be kept posted and kept available for inspection on the premises covered by the license and permit.

"§ 844. Penalties

"(a) Any person who violates subsections (a) through (i) of section 842 of this chapter shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

"(b) Any person who violates any other provision of section 842 of this chapter shall be fined not more than $1,000 or imprisoned not more than one year, or both.

"(c) Any explosive materials involved or used or intended to be used in any violation of the provisions of this chapter or any other rule or regulation promulgated thereunder or any violation of any criminal law of the United States shall be subject to seizure and forfeiture, and all provisions of the Internal Revenue Code of 1954 relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of that Code, shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter.

"(d) Whoever transports or receives, or attempts to transport or receive, in interstate or foreign commerce any explosive with the knowledge or intent that it will be used to kill, injure, or intimidate any individual or unlawfully to damage or destroy any building, vehicle, or other real or personal property, shall be imprisoned for not more than ten years, or fined not more than $10,000, or both; and if personal injury results shall be imprisoned for not more than twenty years or fined not more than $20,000, or both; and if death results, shall be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment as provided in section 34 of this title.

"(e) Whoever, through the use of the mail, telephone, telegraph, or other instrument of commerce, willfully makes any threat, or maliciously conveys false information knowing the same to be false, concerning an attempt or alleged attempt being made, or to be made, to kill, injure, or intimidate any individual or unlawfully to damage or destroy any building, vehicle, or other real or personal property by means of an explosive shall be imprisoned for not more than five years or fined not more than $5,000, or both.

"(f) Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of an explosive, any building, vehicle, or other personal or real property in whole or in part owned, possessed, or used by, or leased to, the United States, any department or agency thereof, or any institution or organization receiving Federal financial assistance shall be imprisoned for not more than ten years, or fined not more than $10,000, or both; and if personal injury results shall be imprisoned for not more than twenty years, or fined not more than $20,000, or both; and if death results shall be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment as provided in section 34 of this title.

"(g) Whoever possesses an explosive in any building in whole or in part owned, possessed, or used by, or leased to, the United States or any department or agency thereof, except

with the written consent of the agency, department, or other person responsible for the management of such building, shall be imprisoned for not more than one year, or fined not more than $1,000, or both.

"(h) Whoever—

"(1) uses an explosive to commit any felony which may be prosecuted in a court of the United States, or

"(2) carries an explosive unlawfully during the commission of any felony which may be prosecuted in a court of the United States.

shall be sentenced to a term of imprisonment for not less than one year nor more than ten years. In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to a term of imprisonment for not less than five years nor more than twenty-five years, and, notwithstading any other provision of law, the court shall not suspend the sentence of such person or give him a probationary sentence.

"(i) Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of an explosive, any building, vehicle, or other real or personal property used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce shall be imprisoned for not more than ten years or fined not more than $10,000, or both; and if personal injury results shall be imprisoned for not more than twenty years or fined not more than $20,000, or both; and if death results shall also be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment as provided in section 34 of this title.

"(j) For the purposes of subsections (d), (e), (f), (g), (h), and (i) of this section, the term 'explosive' means gunpowders, powders used for blasting, all forms of high explosives, blasting materials, fuzes (other than electric circuit breakers), detonators, and other detonating agents, smokeless powders, other explosive or incendiary devices within the meaning of paragraph (5) of section 232 of this title, and any chemical compounds, mechancial mixture, or device that contains any oxidizing and combustible units, or other ingredients, in such proportions, quantities, or packing that ignition by fire, by friction, by concussion, by percussion, or by detonation of the compound, mixture, or device or any part thereof may cause an explosion.

"§845. Exceptions; relief from disabilities

"(a) Except in the case of subsections (d), (e), (f), (g), (h), and (i) of section 844 of this title, this chapter shall not apply to:

"(1) any aspect of the transportation of explosive materials via railroad, water, highway, or air which are regulated by the United States Department of Transportation and agencies thereof;

"(2) the use of explosive materials in medicines and medicinal agents in the forms prescribed by the official United States Pharmacopeia, or the National Formulary;

"(3) the transportation, shipment, receipt, or importation of explosive materials for delivery to any agency of the United States or to any State or political subdivision thereof;

"(4) small arms ammunition and components thereof;

"(5) black powder in quantities not to exceed five pounds; and

"(6) the manufacture under the regulation of the military department of the United States of explosive materials for, or their distribution to or storage or possession by the military or naval services or other agencies of the United States; or to arsenals, navy yards, depots, or other establishments owned by, or operated by or on behalf of the United States.

"(b) A person who had been indicted for or convicted of a crime punishable by imprisonment for a term exceeding one year may make application to the Secretary for relief from the disabilities imposed by this chapter with respect to engaging in the business of importing, manufacturing, or dealing in explosive materials, or the purchase of explosive materials, and incurred by reason of such indictment or conviction, and the Secretary may grant such relief if it is established to his satisfaction that the circumstances regarding the indictment or conviction, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief will not be contrary to the public interest. A licensee or permittee who makes application for relief from the disabilities incurred under this chapter by reason of indictment or conviction, shall not be barred by such indictment or conviction from further operations under his license or permit pending final action on an application for relief filed pursuant to this section.

"§ 846. Additional powers of the Secretary

"The Secretary is authorized to inspect the site of any accident, or fire, in which there is reason to believe that explosive materials were involved, in order that if any such incident has been brought about by accidental means, precautions may be taken to prevent similar accidents from occurring. In order to carry out the purpose of this subsection, the Secretary is authorized to enter into or upon any property where explosive materials have been used, are suspected of having been used, or have been found in an otherwise unauthorized location. Nothing in this chapter shall be construed as modifying or otherwise affecting in any way the investigative authority of any other Federal agency. In addition to any other investigative authority they have with respect to violations of provisions of this chapter, the Attorney General and the Federal Bureau of Investigation, together with the Secretary, shall have authority to conduct investigations with respect to violations of subsection (d), (e), (f), (g), (h), or (i) of section 844 of this title.

"§ 847. Rules and regulations

"The administration of this chapter shall be vested in the Secretary. The Secretary may prescribe such rules and regulations as he deems reasonably necessary to carry out the provisions of this chapter. The Secretary shall give reasonable public notice, and afford to interested parties opportunity for hearing, prior to prescribing such rules and regulations.

"§ 848. Effect on State law

"No provision of this chapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject matter, unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together."

(b) The title analysis of title 18, United States Code, is amended by inserting immediately below the item relating to chapter 39 the following:

"40. Importation, manufacture, distribution and storage of explosive materials ..... 841".

SEC. 1103. Section 2516(1)(c) of title 18, United States Code, is amended by inserting after "section 224 (bribery in sporting contests)," the following: "subsection (d), (e), (f), (g), (h), or (i) of section 844 (unlawful use of explosives),".

SEC. 1104. Nothing in this title shall be construed as modifying or affecting any provision of—

(a) The National Firearms Act (chapter 53 of the Internal Revenue Code of 1954);

(b) Section 414 of the Mutual Security Act of 1954 (22 U.S.C. 1934), as amended, relating to munitions control;

(c) Section 1716 of title 18, United States Code, relating to nonmailable materials;

(d) Sections 831 through 836 of title 18, United States Code; or

(e) Chapter 44 of title 18, United States Code.

SEC. 1105. (a) Except as provided in subsection (b), the provisions of chapter 40 of title 18, United States Code, as enacted by section 1102 of this title shall take effect one hundred and twenty days after the date of enactment of this Act.

(b) The following sections of chapter 40 of title 18, United States Code, as enacted by section 1102 of this title shall take effect on the date of the enactment of this Act: sections 841, 844 (d), (e), (f), (g), (h), (i), and (j), 845, 846, 847, 848, and 849.

(c) Any person (as defined in section 841(a) of title 18, United States Code) engaging in a business or operation requiring a license or permit under the provisions of chapter 40 of such title 18 who was engaged in such business or operation on the date of enactment of this Act and who has filed an application for a license or permit under the provisions of section 843 of such chapter 40 prior to the effective date of such section 843 may continue such business or operation pending final action on his application. All provisions of such chapter 40 shall apply to such applicant in the same manner and to the same extent as if he were a holder of a license or permit under such chapter 40.

SEC. 1106. (a) The Federal Explosives Act of October 6, 1917 (40 Stat. 385, as amended; 50 U.S.C. 121–143), and as extended by Act of July 1, 1948 (40 Stat. 671; 50 U.S.C. 144), and all regulations adopted thereunder are hereby repealed.

(b)(1) Section 837 of title 18 of the United States Code is repealed.

(2) The item relating to such section 837 in the chapter analysis of chapter 39 of such title 18 is repealed.

SEC. 1107. There are hereby authorized to be appropriated such sums as are necessary to carry out the purposes of this title.

Mr. CELLER (during the reading). Mr. Chairman, I ask unanimous consent that title XI be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

AMENDMENT OFFERED BY MR. HUNGATE

Mr. HUNGATE. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. HUNGATE: On page 165, after the period on line 15, add the following new sentence: "The possession of an explosive in such a manner as to evince an intent to use, or the use of, such explosive, to kill, injure, or intimidate any individual or unlawfully to damage or destroy any building, vehicle, or other real or personal property creates rebuttable presumptions that the explosive was transported or received in interstate or foreign commerce or caused to be transported or received in interstate or foreign commerce by the person so possessing or using it: *Provided*, That no person may be convicted under this subsection unless there is evidence independent of the presumptions that this subsection has been violated."

[Mr. HUNGATE addressed the Committee. His remarks will appear hereafter in the Extensions of Remarks.]

Mr. CELLER. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, the gentleman from Missouri emphasizes what he calls "rebuttable presumptions."

I want to enlighten the gentleman by saying that the Supreme Court has frowned upon rebuttable presumptions and has in innumerable cases cast them aside.

So I do not know what the real value would be of having the phrase "rebuttable presumptions" as contained in the amendment.

Further and beyond that, we had the direct testimony before the committee offered by Mr. Wilson, Assistant Deputy Attorney General, and he suggested that the amendment that has been offered by the gentleman from Missouri or rather the exact words that are in the amendment offered by the gentleman from Missouri—and this is what he had to say "Third, we have deleted the present subsection (c)"—which is the wording of the amendment.

He said:

This subsection creates a rebuttable presumption that a person who uses an explosive for certain destructive purposes or who possess it with intent to use it has violated Section (b). This presumption is of dubious validity or value.

Furthermore, the addition of new substantive prohibitions regarding the possession and use of subsections (d), (f) and (g) of the revised section would obviate the need to rely upon the presumption.

If the gentleman from Missouri would take the trouble to refer in the bill to page 165, line 25, and run his eye down the entire page 166 and almost the entire page 167, he will see there enumerated any number of actions definitely described as criminal actions and new offenses under this bill so that no presumptions are really required.

Mr. HUNGATE. Mr. Chairman, will the gentleman yield?

Mr. CELLER. I yield to the gentleman.

Mr. HUNGATE. Mr. Chairman, is there anywhere in that language to which the gentleman refers which would provide for an investigation where there was a bombing of a residence—not in interstate commerce?

Mr. CELLER. There is none today and you must remember that the mere bombing of a private home even under this bill would not be covered because of the question of whether the Congress would have the authority under the Constitution. We limit it to federally owned property and federally controlled property that has been the recipient of a grant of Federal funds or that is financially connected with the Federal Government, like airports, universities, and various installations of the Government.

Mr. HUNGATE. Mr. Chairman, will the gentleman yield further?

Mr. CELLER. I yield to the gentleman from Missouri.

Mr. HUNGATE. The present act, page 105, section (b) describes residential property, and refers to transporting any explosive or using any explosive on residential property, whether or not it is used in interstate commerce.

Mr. CELLER. There are limitations. Section (d) on page 165 states:

"(d) Whoever transports or receives, or attempts to transport or receive, in interstate or foreign commerce any explosive with the knowledge or intent that it will be used to kill, injure, or intimidate any individual or unlawfully to damage or destroy any building—

Which includes what the gentleman has stated; in that sense, yes.

Mr. HUNGATE. Mr. Chairman, will the gentleman yield further?

Mr. CELLER. I yield to the gentleman from Missouri.

Mr. HUNGATE. I agree with the gentleman's reading from page 165 of the bill; it requires interstate commerce to be involved, and the law as now written, as shown in the report on page 105, sections (b) and (c), does not make that requirement of interstate commerce. It does not state there is a presumption of interstate commerce.

Mr. CELLER. There are these other conditions.

Mr. POFF. Mr. Chairman, I move to strike the requisite number of words.

The CHAIRMAN. The gentleman from Virginia is recognized.

Mr. POFF. Mr. Chairman, I join with the Chairman of the committee in opposition to the amendment. I do so reluctantly, because the gentleman who offered the amendment is a personal friend as well as a scholar in the law, *And yet I am obliged to do so.*

Subsection (c) of the present section 837 creates a presumption, when the possession of an explosive by a person with the intent to violate subsection (b) is proved, that the explosive was transported in interstate or foreign commerce. This presumption was removed from the bill primarily for two reasons: First, that the presumption itself is of limited utility, because it requires evidence independent of the presumption to sustain it. As the distinguished gentleman from Missouri knows, there is the substantial doubt as to the constitutionality of such a presumption. The gentleman is familiar with the decision of the Supreme Court in Tot against United States, and more recently in Leary against United States, which referred to the Tot case.

Mr. HUNGATE. Mr. Chairman, will the gentleman yield?

Mr. POFF. I yield to the gentleman from Missouri.

Mr. HUNGATE. I appreciate the gentleman's comments. I respect his ability greatly. I know of no finer lawyer anywhere, and I appreciate the gentleman's remarks. I would agree with him on the question of conviction. My concern is with relation to police departments at the State level where simply a residence is destroyed, or a Chamber of Commerce building bombed. Under the present law, as I read it, until the Supreme Court does declare it unconstitutional—and I am daily surprised at the Supreme Court, so I say it might be ruled unconstitutional—under those circumstances many local sheriff's offices are involved, and how many of your own hometowns have comprehensive bomb squads able to conduct an investigation as well as the FBI can? They may find there is no interstate matter involved, but I would hope that they would make the results of their findings in intrastate matters available.

Mr. POFF. I thank the gentleman.

Mr. SMITH of Iowa. Mr. Chairman, I move to strike the requisite number of words.

The CHAIRMAN. The gentleman from Iowa is recognized.

Mr. SMITH of Iowa. Mr. Chairman, I wish the Committee would very seriously consider this amendment. I think it really has a lot of justification. In Iowa we have had five bombings. One of them happened to be a chamber of commerce building. Let us look at the practical aspects of this bill and this amendment. The fact of the matter is that under existing law, since 1960 the FBI has had the authority to move in and to help with the investigation of such buildings. If it were a chamber of commerce building, if it were a residence, it might be the mayor's residence or it might be the panther headquarters or it might be the police association headquarters—they now have that authority to investigate and they have had that authority since 1960. It is true that it has not been exercised very much. But they have the authority, and now the President has asked for another 1,000 FBI agents to investigate bombings on college campuses. They should also work on other bombings.

Mr. POFF. Mr. Chairman, will the gentleman yield?

Mr. SMITH of Iowa. I yield to the gentleman from Virginia.

Mr. POFF. Mr. Chairman, I note the gentleman is under the misconception, and it is a popular misconception, that the 1,000 additional FBI personnel requested by the President were to be assigned to this function, and this is an error. The 1,000 additional FBI men are justified primarily from the enlarged jurisdiction in the gambling title of this legislation and not in the explosives title.

Mr. SMITH of Iowa. They now have agents looking over the shoulders of the Treasury explosive experts who are now helping with bombing assignments and we will need more of them. As a practical matter, they do have the authority now to help with investigations. We are going to have more agents. We are repealing in this bill the authority for them to move in if the mayor's home or the chamber of commerce's quarters are bombed. It seems to me at this time in our history, we ought not to be repealing that kind of authority.

Mr. ECKHARDT. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise at this time to ask the distinguished chairman of the committee a question with respect to the interpretation both of the bill and of present law.

The day before yesterday a radio station in Houston called Pacifica was bombed for the second time. I have been very concerned about the matter, and I have urged the FBI to make an investigation of the matter. I understand they are standing by, but I have had no assurance that they will move into the case.

What I would like to ask is both under existing law and under the law as it

would be if this bill is passed, is there a sufficient Federal question of a Federal offense involved to permit the FBI to make such investigation?

Mr. CELLER. I would say under the bill we are considering there should be no doubt that the FBI would have jurisdiction, because it is affecting interstate commerce, affecting the television or radio station, and specifically we have the words on page 167 under (i):

Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of an explosive, any building, vehicle, or other real or personal property used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce shall be imprisoned for not more than ten years or fined not more than $10,000, or both; and if personal injury results shall be imprisoned . . .

So there is no doubt that under this bill the FBI would have the authority.

Now, whether there would be the authority under the present law, I am inclined to the view that they do undoubtedly have authority, because a television station or radio station is affected by interstate commerce and authority seems to be lodged there. Why they do not respond, of course, I cannot answer. There may be some other values there which I do not understand.

Mr. ECKHARDT. I am most concerned that in the second instance they have not yet responded.

Mr. CELLER. Let us get this bill through, and they will have to respond.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Missouri (Mr. HUNGATE).

The question was taken; and on a division (demanded by Mr. HUNGATE) there were—ayes 20, noes 49.

So the amendment was rejected.

Mr. DINGELL. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I should like to direct some questions to my good friend from New York (Mr. CELLER), and to my good friend from Virginia (Mr. POFF).

I should like to refer to the language on page 169, lines 3, 4, 5, and 6, which treat of the definition.

I should particularly like to have the comments of my good friend from Virginia with regard to this.

As I understand section 845, it provides that the provisions of licensing and the transportation of explosives, et cetera, do not extend to small arms ammunition and components thereof. Am I correct in my understanding?

Mr. POFF. Mr. Chairman, will the gentleman yield?

Mr. DINGELL. I am happy to yield to my friend from Virginia.

Mr. POFF. The gentleman is correct.

Mr. DINGELL. This would mean all elements of small arms ammunition and all components, such as black powder, smokeless power, and primers.

I am well satisfied that would also include the caps that would be used to ignite black powder for sportsmen who shoot black powder arms. Am I correct?

Mr. POFF. As I understand the definitions in this bill, the gentleman is correct.

Mr. DINGELL. I am particularly troubled, because the other language earlier in the bill dealing with other definitions could be used to apply to items such as primers, to items such as caps used to ignite black powder as used in sporting firearms by those who happen to shoot with black powder. I assume the gentleman from Virginia agrees with me that caps for igniting black powder in sporting rifles, pistols, and shotguns would have benefit of the exemptions I refer to.

Am I correct in my understanding?

Mr. POFF. As I understand the gentleman's question, the gentleman is correct.

Mr. DINGELL. I want the record to be very clear, I say to my good friend from Virginia, because on lines 5 and 6, page 169, appears a further item—and I now read from the bill:

(5) black powder in quantities not to exceed five pounds.

This would not exclude, by reason of the fact that the black powder appears separately, the caps which would be used under (4) for the ignition of black powder, in black powder sporting pistols and black powder rifles; am I correct in my understanding?

Mr. POFF. Within the definitions of the title, the gentleman is correct.

Mr. DINGELL. In other words, we have here a situation, as I understand it, where all of the components of sporting rifle, pistol, and shotgun ammunition—powder, primers, and the fully assembled components—are included in the exclusion sections we have been discussing.

Mr. POFF. Within the definitions of the bill, the gentleman is correct.

Mr. DINGELL. I want to thank my good friend. I have been treating of this to establish legislative history, as I know my good friend from Virginia understands. It is my wish we should make it very plain that the sportsmen of the Nation are not going to be harassed again by unwise legislation.

Mr. ROBERTS. Mr. Chairman, will the gentleman yield to me so that I might ask a question of the gentleman from Virginia?

Mr. DINGELL. I am most happy to yield to the gentleman from Texas for that purpose.

Mr. ROBERTS. I would not object, certainly, to a reasonable limitation, but is there any limitation as to how many rounds, say, of rifle ammunition are involved? I happen to have a half dozen rifles. If one has 20 or 30 for each rifle, and one pound of powder for each rifle, is there any such limitation that would really be prohibitive in this bill?

Mr. POFF. Mr. Chairman, will the gentleman yield?

Mr. DINGELL. I am happy to yield to my friend from Virginia.

Mr. POFF. As the distinguished gentleman from Michigan pointed out earlier, all small arms ammunition and components thereof are exempt from the reach of the bill, as is all black powder in quantities not to exceed 5 pounds.

Mr. ROBERTS. The small arms ammunition would cover all sporting caliber rifles, up to .375 or .450; for anything in the sporting rifle sizes.

Mr. DINGELL. It would also include pistols and shotguns. I am sure my friend from Virginia wants that to show, in the RECORD, too.

Mr. POFF. Mr. Chairman, will the gentleman yield?

Mr. DINGELL. I certainly yield to the gentleman from Virginia.

Mr. POFF. So far as I understand the articles which the gentleman mentions, the answer is in the affirmative.

Mr. DINGELL. I thank my friend.

(Mr. DINGELL asked and was given permission to revise and extend his remarks.)

The CHAIRMAN. Are there any further amendments to be offered to title XI of the bill? If not, the Clerk will read.

The Clerk read as follows:

TITLE XII—NATIONAL COMMISSION ON INDIVIDUAL RIGHTS

SEC. 1201. There is hereby established the National Commission on Individual Rights (hereinafter in this title referred to as the "Commission").

SEC. 1202. The Commission shall be composed of fifteen members appointed as follows:

(1) four appointed by the President of the Senate from Members of the Senate;

(2) four appointed by the Speaker of the House of Representatives from Members of the House of Representatives; and

(3) seven appointed by the President of the United States from all segments of life in the United States, including but not limited to lawyers, jurists, and policemen, none of whom shall be officers of the executive branch of the Government.

SEC. 1203. The President of the United States shall designate a Chairman from among the members of the Commission. Any vacancy in the Commission shall not affect its powers but shall be filled in the same manner in which the original appointment was made.

SEC. 1204. It shall be the duty of the Commission to conduct a comprehensive study and review of Federal laws and practices relating to special grand juries authorized under chapter 216 of title 18, United States Code, dangerous special offender sentencing under section 3575 of title 18, United States Code, wiretapping and electronic surveillance, bail reform and preventive detention, no-knock search warrants, and the accumulation of data on individuals by Federal agencies as authorized by law or acquired by executive action. The Commission may also consider other Federal laws and practices which in its opinion may infringe upon the individual rights of the people of the United States. The Commission shall determine which laws and practices are needed, which are effective, and whether they infringe upon the individual rights of the people of the United States.

SEC. 1205. (a) Subject to such rules and regulations as may be adopted by the Commission, the Chairman shall have the power to—

(1) appoint and fix the compensation of an Executive Director, and such additional staff personnel as he deems necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at rates not in excess of the maximum rate for GS–18 of the General Schedule under section 5332 of such title; and

(2) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code, but at rates not to exceed $100 a day for individuals.

(b) In making appointments pursuant to subsection (a) of this section, the Chairman

shall include among his appointment individuals determined by the Chairman to be competent social scientists, lawyers, and law enforcement officers.

SEC. 1206. (a) A member of the Commission who is a Member of Congress shall serve without additional compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of duties vested in the Commission.

(b) A member of the Commission from private life shall receive $100 per diem when engaged in the actual performance of duties vested in the Commission, plus reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of such duties.

SEC. 1207. Each department, agency, and instrumentality of the executive branch of the Government, including independent agencies, is authorized and directed to furnish to the Commission, upon request made by the Chairman, such statistical data, reports, and other information as the Commission deems necessary to carry out its functions under this title. The Chairman is further authorized to call upon the departments, agencies, and other offices of the several States to furnish such statistical data, reports, and other information as the Commission deems necessary to carry out its functions under this title.

SEC. 1208. The Commission shall make interim reports and recommendations as it deems advisable, but at least every two years, and it shall make a final report of its findings and recommendations to the President of the United States and to the Congress at the end of six years following the effective date of this section. Sixty days after the submission of the final report, the Commission shall cease to exist.

SEC. 1209. (a) Except as provided in subsection (b) of this section, any member of the Commission is exempted, with respect to his appointment, from the operation of sections 203, 205, 207, and 209 of title 18, United States Code.

(b) The exemption granted by subsection (a) of this section shall not extend—

(1) to the receipt of payment of salary in connection with the appointee's Government service from any source other than the private employer of the appointee at the time of his appointment, or

(a) during the period of such appointment, to the prosecution, by any person so appointed, of any claim against the Government involving any matter with which such person, during such period, is or was directly connected by reason of such appointment.

SEC. 1210. The foregoing provisions of this title shall take effect on January 1, 1972.

SEC. 1211. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this title.

SEC. 1212. Section 804 of the Omnibus Crime Control and Safe Streets Act of 1968 (Public Law 90-351; 18 U.S.C. 2510 note) is repealed.

Mr. CELLER (during the reading). Mr. Chairman, I ask unanimous consent that title XII be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. PEPPER. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise to speak in support of S. 30.

Since this body honored me last year by permitting me to serve as chairman of its Select Committee on Crime, I have been shocked by what our investigations have revealed about the onslaught of organized crime in our Nation. Wherever we have held hearings, and we have done so in representative areas across the Nation, we have seen the deleterious influence which organized crime has visited upon our society.

One aspect of crime we have studied in depth is the so-called "street crime," the violent antisocial behavior that strikes real fear in the hearts of all Americans. Yet it is clear to our committee that the influence of organized crime is often at work fanning the flames of violent crimes committed by the poor.

The narcotics addict, for instance, is often responsible for half of the violent crimes committed in our Nation's cities. He turns to crime to support his incredibly expensive heroin "habit." But it is organized crime which controls the highly lucrative heroin traffic. And while the addict or street pusher may be arrested, the organized crime elements behind the trade protect themselves from detection and prosecution by the impenetrable web of secrecy inherent in a tightly knit, complex corporate structure. We need to enact S. 30 to help break this web of secrecy.

Too often in the past, Federal law enforcement officials and Federal prosecutors have lacked the tools to fight organized crime, which, of course, lacks nothing in its fight against the law.

This bill give law enforcement officials some of the tools they need, but not enough. I heartily support section 5 of this bill which gives the Government authority to secure housing for Government witnesses if it is deemed necessary for their safety. But this bill omits an important related contingency—funds to pay informers for the information they provide. Organized crime informers rarely decide to tell all because of a sudden sense of contrition. As any criminal knows, money can buy a lot in the underworld. I think Federal agents ought to be able to buy the best of the underworld market, and to do it under the color and sanction of statutory law.

Mr. Chairman, title IX of this bill is a welcome, but unfortunately, tardy response to a problem which has plagued law enforcement for the last two decades; namely, the movement of organized crime into the legitimate business community. The statutory language referring to "racketeering activity" is a necessary first step in our Government's fight against the forces of syndicated and sophisticated organized crime and its corrupting influences upon financial institutions, brokerage houses, banks, and public corporations. However, sadly, this bill does not go far enough in tracing the sources of illicit gain into allegedly licit channels of interstate commerce.

For several months, the House Select Committee on Crime has been investigating the movement of organized crime into sophisticated interstate financial dealings, including financial institutions, brokerage houses, banks, and public corporations. Our investigation has amply demonstrated the ascension of organized crime into a giant corporate conglomerate, equal to and rivaling any of our recognized major American corporations.

An illicit syndicated figure whom we have under investigation sardonically remarked recently that he and his organization were bigger than U.S. Steel. Tragically, our investigations substantiate this frightening tale and Government's feeble response to this voracious giant which is threatening the very fabric of our Nation.

It is alarming for us on the House Select Committee on Crime to note that several banks throughout the United States, both large and small, have failed in the past few years. The relationship of those bank failures to the movement of organized crime into nationwide sophisticated corporate and banking transactions is a matter which our committee has under close scrutiny at the present time.

Title IX does not establish an intergovernmental investigatory agency, wherein the resources and talents of Government officials sophisticated in financial dealings could be pooled together in an attempt to compete with organized crime's highly talented and generously financed activities. All too often, our committee has found that law enforcement agencies are hindered by petty jurisdictional disputes during the course of an organized crime investigation. Organized crime does not recognize the nicities of jurisdictional boundaries. Additional tools are obviously needed.

TITLE X. DANGEROUS SPECIAL OFFENDER SENTENCING

Title X, involving the special treatment for dangerous offenders is a needed response to a threatening problem; namely, the continuing interstate criminal conduct of organized crime figures who are not in any way deterred by our normal sentencing procedures.

Our committee heard shocking testimony in New York at our heroin hearings to the effect that 12 to 15 individuals, all organized crime figures, control 80 percent of all the illicit traffic in heroin into the port of New York, the central distribution point of our Nation. Most of these men have criminal records. However, the profit motive is so compelling in the heroin business and the defendant's criminal involvement is so extensive within his syndicate, that the ordinary sentencing provisions provided in the relevant criminal statutes will in no way deter his future criminal activity.

As we all know, organized criminal elements are constantly attempting to subvert officials of local and State governments so that their illicit activities might continue unobstructed.

The provisions for the possible extension of time of special grand juries from 18 to 36 months is highly commendable since by their very nature many organized crime cases due to their complexity will require extensive, complicated, and time-consuming grand jury hearings.

Startling figures have been presented to our committee as to the pecuniary effect of organized illegal gambling. Again, this bill acts against the possible subversion of Government forces for the promotion of gambling activities by prohibiting conspiracies to undermine local law enforcement. In addition, the bill

punishes the organizers and managers of certain types of gambling enterprises.

I do question, though, whether we have been too careful concerning the enterprises to be proscribed. Does it really take five men or an income of $2,000 a day to make an organized gambling enterprise? We may do well to consider lowering the number of individuals involved to perhaps two or more, the amount of money taken in to $500. Finally, due to the nebulous nature of many gambling establishments, perhaps the length of operation qualifying any one operation as being continuous should be reduced to 2 weeks of continuous activity.

Although the bill will not by any means reach all gambling activities, it will provide a meaningful beginning in the overall fight.

Mr. Chairman, the fight against organized crime will be a long, complicated, and expensive one. The threads of the organized crime conspiracy run into many of the major portions of the American business and economic community. Sophisticated devices and methods will be needed to combat the evil forces that have so long gone unchecked. This is a start, Mr. Chairman, and I assure you the fight will go on.

We have testimony that the organized crime crowd in this country has a take from heroin alone of $7 billion a year. So we can see that organized crime presents a terrible menace to this country. I hope there will be an amount of money appropriated that will be far in excess of the amount presently appropriated to deal with this menace.

AMENDMENT OFFERED BY MR. SCOTT

Mr. SCOTT. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. SCOTT: On page 174 strike out all of Title XII down through and including line 11 on page 178.

Mr. SCOTT. Mr. Chairman, this amendment does strike out the entire title XII that relates to the establishment of a National Commission on Individual Rights.

Mr. Chairman, if we look at the title, we find that it authorizes the establishment of a Commission to investigate Federal laws and practices relating to special grand juries, to dangerous special offender sentencing, to wiretapping and electronic surveillance, bail reform, preventive detention, no-knock warrants, and the accumulation of data on individuals by Federal agencies. It would also authorize the investigation of laws and practices which, in its opinion, may infringe upon the individual rights of people.

Mr. Chairman, I have some doubts about whether we should have further national study commissions, because a number of our national study commissions that we have recently had move come back with reports which, in my opinion, are not in the national interest.

And, I have doubts as to whether the establishment of this Commission is in the national interest. We have the Civil Rights Division of the Department of Justice to investigate any denial of the civil rights of any individual. Certainly our courts are to protect the rights of individual citizens. It is in my opinion a fact that our courts have bent over backward in the protection of individual rights and have forgotten the rights of society to be protected.

Mr. Chairman, I am afraid that this Commission will be a harassing agency and that it will harass law enforcement officers. I see no useful purpose in this provision.

I am quite aware of the fact that our Judiciary Committee today is operating under the unit rule and I do not have any great expectation that this amendment will be adopted. Yet, this title is not in the Senate bill. I am hopeful that through an expression of opinion here in the House at least we can strengthen the conference committee when they are ironing out the differences between the House and the Senate bills so that this title will ultimately be stricken from the bill.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Virginia (Mr. SCOTT).

The amendment was rejected.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

TITLE XIII—GENERAL PROVISIONS

SEC. 1301. If the provisions of any part of this Act or the application thereof to any person or circumstances be held invalid, the provisions of the other parts and their application to other persons or circumstances shall not be affected thereby.

(Mr. GROSS asked and was given permission to extend his remarks at this point in the RECORD.)

Mr. GROSS. Mr. Chairman, I rise in support of this bill, although I have serious misgivings about some of the provisions contained therein.

The bill is acceptable only because of the very serious crime situation that scrouges the Nation from one end to the other and which requires drastic action. It is sad and tragic that this situation was permitted to develop and that we must now authorize the Federal Government to intervene with further powers in the affairs of the States and local subdivisions of government.

The creation of two more commissions in this legislation is unwarranted. These ought to have been stricken and I voted to do so. However, because of the dire need to bring crime under control I could not vote against the bill.

The need for this legislation, with its delegations of power and imperfections, is further evidence of the decadence that besets this country. Let us fervently hope that the crime situation can be brought under control promptly and that as quickly as possible thereafter many of the provisions of this legislation will be repealed.

Mr. ROTH. Mr. Chairman, I move to strike the requisite number of words.

(Mr. ROTH asked and was given permission to revise and extend his remarks.)

Mr. ROTH. Mr. Chairman, I would like to speak very briefly upon title XII and thank the members of the committee for acting so promptly and favorably on my proposal on a Commission on Individual Rights.

I would like to say that I have been a believer in developing new anticrime tools because of the high incidence of crime.

I have been one who has supported preventive detention and the District of Columbia crime bill.

I agree with the New York Times when it says:

In the last analysis, the enemies of the police are the enemies of all organized society and of the personal security which is society's first obligation toward all its members.

I believe it is important that we do develop new tools, but at the same time I think it is important that we make sure these new tools have the kind of effectiveness that we want.

Mr. Chairman, I would like to point out that this Commission has a two-edged responsibility. First, to report as to the effectiveness of these new anticrime provisions and, second, to advise—and it is strictly an advisory committee—the Congress and the President as to whether there have been any undue infringements upon individual liberties.

Mr. Chairman, I would like to emphasize that the Commission replaces the Commission that was established for wiretapping. It is modeled along very much the same lines.

I think it is very important to recognize that under the provisions of this section this new Commission will have the right to study the effect of wiretaps at the State level as well as at the Federal level.

Mr. SCOTT. Mr. Chairman, will the gentleman yield?

Mr. ROTH. I am glad to yield to the gentleman from Virginia.

Mr. SCOTT. Mr. Chairman, let me assure the distinguished gentleman from Delaware that my amendment had nothing to do with his background in the field of supporting the enactment of criminal laws in this body. I am well aware that the gentleman has supported the various measures that have come before this House.

This particular topic I believe is objectionable, and that is the reason for the proposal.

Mr. ROTH. I thank the gentleman from Virginia.

Mr. Chairman, I would also like to thank the gentleman from Pennsylvania (Mr. BIESTER), for his able and strong leadership in obtaining approval of my proposal in the Judiciary Committee.

The CHAIRMAN. The question is on the committee amendment in the nature of a substitute.

The committee substitute amendment was agreed to.

The CHAIRMAN. Under the rule, the Commitee rises.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. ROONEY of New York, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee having had under consideration the bill (S. 30) relating to the

control of organized crime in the United States, pursuant to House Resolution 1235, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER. Under the rule, the previous question is ordered.

The question is on the amendment.

The amendment was agreed to.

The SPEAKER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER. The question is on the passage of the bill.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. GERALD R. FORD. Mr. Speaker, I object to the vote on the ground that a quorum is not present, and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Doorkeeper will close the doors, the Sergeant-at-Arms will notify absent Members, and the Clerk will call the roll.

The question was taken; and there were—yeas 341, nays 26, not voting 63, as follows:

[Roll No. 332]

YEAS—341

| | | |
|---|---|---|
| Abernethy | Clausen, | Gettys |
| Adams | Don H. | Giaimo |
| Addabbo | Cleveland | Gibbons |
| Albert | Collier | Gilbert |
| Alexander | Collins | Goldwater |
| Anderson, | Colmer | Goodling |
| Calif. | Conable | Gray |
| Anderson, Ill. | Conte | Green, Oreg. |
| Anderson, | Corman | Green, Pa. |
| Tenn. | Coughlin | Griffin |
| Andrews, Ala. | Cramer | Gross |
| Andrews, | Crane | Grover |
| N. Dak. | Culver | Gubser |
| Annunzio | Cunningham | Gude |
| Arends | Daniel, Va. | Hagan |
| Ashbrook | Daniels, N.J. | Hall |
| Ashley | Davis, Ga. | Halpern |
| Ayres | Davis, Wis. | Hamilton |
| Baring | Delaney | Hammer- |
| Barrett | Dellenback | schmidt |
| Beall, Md. | Denney | Hanley |
| Belcher | Dennis | Hansen, Idaho |
| Bell, Calif. | Dent | Hansen, Wash. |
| Bennett | Devine | Harrington |
| Bevill | Dickinson | Harsha |
| Biaggi | Dingell | Hastings |
| Biester | Donohue | Hathaway |
| Blackburn | Dorn | Hays |
| Blanton | Downing | Hechler, W. Va. |
| Blatnik | Dulski | Heckler, Mass. |
| Boggs | Duncan | Henderson |
| Boland | Dwyer | Hicks |
| Bow | Edmondson | Hogan |
| Brademas | Edwards, Ala. | Holifield |
| Brasco | Edwards, Calif. | Horton |
| Bray | Eilberg | Hosmer |
| Brinkley | Erlenborn | Howard |
| Broomfield | Esch | Hull |
| Brotzman | Eshleman | Hungate |
| Brown, Mich. | Evans, Colo. | Hunt |
| Broyhill, N.C. | Evins, Tenn. | Hutchinson |
| Broyhill, Va. | Fascell | Ichord |
| Buchanan | Findley | Jacobs |
| Burke, Fla. | Fish | Jarman |
| Burke, Mass. | Flood | Johnson, Calif. |
| Burleson, Tex. | Flowers | Johnson, Pa. |
| Burlison, Mo. | Foley | Jones, Ala. |
| Burton, Utah | Ford, Gerald R. | Jones, Tenn. |
| Byrne, Pa. | Ford, | Karth |
| Byrnes, Wis. | William D. | Kastenmeier |
| Caffery | Fountain | Kazen |
| Camp | Fraser | Kee |
| Carey | Frelinghuysen | Keith |
| Carter | Frey | King |
| Casey | Friedel | Kleppe |
| Cederberg | Fulton, Pa. | Kluczynski |
| Celler | Fulton, Tenn. | Kuykendall |
| Chamberlain | Fuqua | Kyl |
| Chappell | Galifianakis | Kyros |
| Clancy | Garmatz | Landgrebe |
| Clark | Gaydos | Langen |
| Latta | Patten | Smith, Calif. |
| Leggett | Pelly | Smith, Iowa |
| Lennon | Pepper | Smith, N.Y. |
| Lloyd | Perkins | Springer |
| Long, La. | Pettis | Stafford |
| Long, Md. | Philbin | Staggers |
| Lukens | Pickle | Stanton |
| McClure | Pike | Steed |
| McCulloch | Poage | Steiger, Ariz. |
| McDade | Pofi | Steiger, Wis. |
| McDonald, | Preyer, N.C. | Stubblefield |
| Mich. | Price, Ill. | Sullivan |
| McEwen | Price, Tex. | Symington |
| McFall | Pryor, Ark. | Taft |
| McKneally | Pucinski | Talcott |
| Macdonald, | Quie | Taylor |
| Mass. | Quillen | Teague, Calif. |
| MacGregor | Railsback | Teague, Tex. |
| Madden | Randall | Thompson, Ga. |
| Mahon | Rarick | Thompson, N.J. |
| Mann | Rees | Thomson, Wis. |
| Marsh | Reid, Ill. | Tiernan |
| Martin | Reid, N.Y. | Udall |
| Mathias | Reuss | Ullman |
| May | Rhodes | Van Deerlin |
| Mayne | Riegle | Vander Jagt |
| Meeds | Roberts | Vanik |
| Melcher | Robison | Vigorito |
| Meskill | Rodino | Waggonner |
| Michel | Roe | Waldie |
| Miller, Calif. | Rogers, Colo. | Wampler |
| Miller, Ohio | Rogers, Fla. | Watson |
| Mills | Rooney, N.Y. | Watts |
| Minish | Rooney, Pa. | Weicker |
| Minshall | Rostenkowski | Whalen |
| Mize | Roth | Whalley |
| Mizell | Rousselot | White |
| Mollohan | Ruppe | Whitten |
| Monagan | Ruth | Widnall |
| Montgomery | St Germain | Wiggins |
| Moorhead | Sandman | Williams |
| Morton | Satterfield | Wilson, Bob |
| Mosher | Saylor | Winn |
| Moss | Schadeberg | Wolff |
| Murphy, Ill. | Scherle | Wright |
| Murphy, N.Y. | Schmitz | Wyatt |
| Myers | Schneebeli | Wydler |
| Natcher | Schwengel | Wylie |
| Nelsen | Scott | Wyman |
| Nichols | Sebelius | Yatron |
| Nix | Shipley | Young |
| Obey | Shriver | Zablocki |
| O'Hara | Sikes | Zion |
| Olsen | Sisk | Zwach |
| O'Neill, Mass. | Skubitz | |
| Passman | Slack | |

NAYS—26

| | | |
|---|---|---|
| Bingham | Eckhardt | Mink |
| Bolling | Farbstein | Podell |
| Brown, Calif. | Gallagher | Rosenthal |
| Burton, Calif. | Gonzalez | Roybal |
| Chisholm | Hawkins | Ryan |
| Clay | Koch | Scheuer |
| Cohelan | Lowenstein | Stokes |
| Conyers | Matsunaga | Yates |
| Diggs | Mikva | |

NOT VOTING—63

| | | |
|---|---|---|
| Abbitt | Feighan | Nedzi |
| Adair | Fisher | O'Konski |
| Aspinall | Flynt | O'Neal, Ga. |
| Berry | Foreman | Ottinger |
| Betts | Griffiths | Patman |
| Brock | Haley | Pirnie |
| Brooks | Hanna | Pollock |
| Brown, Ohio | Harvey | Powell |
| Bush | Hébert | Purcell |
| Button | Helstoski | Reifel |
| Cabell | Jonas | Rivers |
| Clawson, Del | Jones, N.C. | Roudebush |
| Corbett | Landrum | Snyder |
| Cowger | Lujan | Stephens |
| Daddario | McCarthy | Stratton |
| Dawson | McClory | Stuckey |
| de la Garza | McCloskey | Tunney |
| Derwinski | McMillan | Whitehurst |
| Dowdy | Mailliard | Wilson, |
| Edwards, La. | Morgan | Charles H. |
| Fallon | Morse | Wold |

So the bill was passed.

The Clerk announced the following pairs:

Mr. Hébert with Mr. Adair.
Mr. Hanna with Mr. McCloskey.
Mr. Cabell with Mr. Betts.
Mr. Brooks with Mr. Bush.
Mr. Aspinall with Mr. Whitehurst.
Mr. Jones of North Carolina with Mr. McClory.
Mr. Nedzi with Mr. Harvey.
Mr. Patman with Mr. Jonas.
Mr. Edwards of Louisiana with Mr. O'Konski.
Mr. Purcell with Mr. Reifel.
Mr. Fisher with Mr. Berry.
Mr. Rivers with Mr. Pirnie.
Mr. Morgan with Mr. Morse.
Mr. Landrum with Mr. Wold.
Mr. Daddario with Mr. Mailliard.
Mr. de la Garza with Mr. Lujan.
Mr. Flynt with Mr. Roudebush.
Mr. Dowdy with Mr. Derwinski.
Mr. Haley with Mr. Brock.
Mrs. Griffith with Mr. Corbett.
Mr. O'Neal of Georgia with Mr. Brown of Ohio.
Mr. Stuckey with Mr. Snyder.
Mr. Stratton with Mr. Button.
Mr. Charles H. Wilson with Mr. Del Clawson.
Mr. Stephens with Mr. Cowger.
Mr. McMillan with Mr. Foreman.
Mr. Abbitt with Mr. Pollock.
Mr. Tunney with Mr. Powell.
Mr. Ottinger with Mr. Dawson.
Mr. Fallon with Mr. Feighan.
Mr. Helstoski with Mr. McCarthy.

The result of the vote was announced as above recorded.

The doors were opened.

A motion to reconsider was laid on the table.

## MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mr. Leonard, one of his secretaries, who also informed the House that on the following dates the President approved and signed bills and a joint resolution of the House of the following titles:

On September 26, 1970:

H.R. 1747. An act for the relief of Jose Luis Calleja-Perez;

H.R. 5365. An act to provide for the conveyance of certain public land held under color of title to Miss Adelaide Gaines of Mobile, Ala.;

H.R. 10149. An act for the relief of Jack W. Herbstreit;

H.R. 13543. An act to establish a program of research and promotion for United States wheat;

H.R. 16900. An act making appropriations for the Treasury and Post Office Departments, the Executive Office of the President, and certain independent agencies, for the fiscal year ending June 30, 1971, and for other purposes; and

H.R. 17734. An act for the relief of Sherman Webb and others.

On October 2, 1970:

H.J. Res. 1366. Joint resolution to provide for the temporary extension of the Federal Housing Administration's insurance authority.

On October 6, 1970:

H.J. Res. 1178. Joint resolution authorizing the President to proclaim the month of October 1970 as "Project Concern Month";

H.R. 11953. An act to amend section 205 of the Act of September 21, 1944 (58 Stat. 736), as amended; and

H.R. 17795. An act to amend title VII of the Housing and Urban Development Act of 1965, became law without signature by the President. The 10th day for consideration by the President under the Constitution was October 5, 1970.

## FURTHER MESSAGE FROM THE SENATE

A further message from the Senate by Mr. Arrington, one of its clerks, announced that the Senate had passed with amendments in which the concurrence of the House is requested, a bill of the following title:

H.R. 12870. An act to provide for the establishment of the King Range National Conservation Area in the State of California.

## THIRD ANNUAL REPORT ON THE ADMINISTRATION OF THE HIGHWAY SAFETY ACT OF 1966—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 91-397)

The SPEAKER pro tempore (Mr. HOLIFIELD) laid before the House the following message from the President of the United States; which was read and, together with accompanying papers, without objection, referred to the Committee on Public Works and ordered to be printed with illustrations:

*To the Congress of the United States:*

Pursuant to provisions in section 202 of the Highway Safety Act of 1966, I am transmitting herewith for examination by the Congress the third annual report on the administration of this Act. The report covers activity under the Act from January 1 through December 31, 1969.

The report conveys the unavoidable fact that highway crashes continue to take a costly toll: 56,000 deaths and countless injuries in 1969. A small but hopeful trend, however, emerges from the statistics contained in the report: there continues to be a slowdown in the highway death rate, first observed in last year's report to you.

Safety considerations in the design and construction of highways have played a major role in creating this trend. Equally important have been the efforts of each State to mount comprehensive safety programs. These programs cover a wide range of measures dealing, largely, with drinking behavior.

No program is more important than one seeking to control the problem of drunk driving, which accounts for half the nation's highway fatalities. For this reason, the report before you gives the highest priority to the control of drunk driving.

While much has been done in these safety programs, I am sure the Congress agrees that a greater commitment by every American will be required to rid our nation of this terrible cost in lives, injuries, and property damage.

RICHARD NIXON.

THE WHITE HOUSE, *October 7, 1970.*

## THIRD ANNUAL REPORT ON THE ADMINISTRATION OF THE NATIONAL TRAFFIC AND MOTOR VEHICLE SAFETY ACT—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 91-398)

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on Interstate and Foreign Commerce, and ordered to be printed with illustrations:

*To the Congress of the United States:*

Pursuant to provisions of section 120 of the National Traffic and Motor Vehicle Safety Act, I am transmitting herewith for the information of the Congress the third annual report on the administration of the Act. The report covers activities under the Act from January 1 through December 31, 1969.

The report conveys the unavoidable fact that motor vehicle accidents continue to take a costly toll. There were 56,000 deaths and countless injuries in 1969. A small but hopeful trend, however, emerges from the statistics contained in the report: there continues to be a slowdown in the highway death rate, first observed in last year's report to you.

The report presents dramatic examples of survival from crashes which heretofore meant certain death—survival made possible through injury reduction features required by Federal standards for newly manufactured vehicles. The proven success of these features has persuaded the Department of Transportation to assign the highest priority to crash survivability in its programs administered under the National Traffic and Motor Vehicle Safety Act. Significant reductions in the casualty toll are anticipated from new crash survival features which are receiving intensive rulemaking attention in 1970.

While much has been done in these safety programs, I am sure the Congress agrees that a greater commitment by every American will be required to rid our Nation of the terrible cost of lives, injuries, and property damage caused by motor vehicle accidents.

RICHARD NIXON.

THE WHITE HOUSE, *October 7, 1970.*

## THE ENVIRONMENTAL PROTECTION AGENCY—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 91-399)

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee of the Whole House on the State of the Union, and ordered to be printed:

*To the Congress of the United States:*

The oceans, covering nearly three-quarters of the world's surface, are critical to maintaining our environment, for they contribute to the basic oxygen-carbon dioxide balance upon which human and animal life depends. Yet man does not treat the oceans well. He has assumed that their capacity to absorb wastes is infinite, and evidence is now accumulating on the damage that he has caused. Pollution is now visible even on the high seas—long believed beyond the reach of man's harmful influence. In recent months, worldwide concern has been expressed about the dangers of dumping toxic wastes in the oceans.

In view of the serious threat of ocean pollution, I am today transmitting to the Congress a study I requested from the Council on Environmental Quality. This study concludes that:

—the current level of ocean dumping is creating serious environmental damage in some areas.

—the volume of wastes dumped in the ocean is increasing rapidly.

—a vast new influx of wastes is likely to occur as municipalities and industries turn to the oceans as a convenient sink for their wastes.

—trends indicate that ocean disposal could become a major nationwide environmental problem.

—unless we begin now to develop alternative methods of disposing of these wastes, institutional and economic obstacles will make it extremely difficult to control ocean dumping in the future.

—the nation must act now to prevent the problem from reaching unmanageable proportions.

The study recommends legislation to ban the unregulated dumping of all materials in the oceans and to prevent or rigorously limit the dumping of harmful materials. The recommended legislation would call for permits by the Administrator of the Environmental Protection Agency for the transportation and dumping of all materials in the oceans and in the Great Lakes.

I endorse the Council's recommendations and will submit specific legislative proposals to implement them to the next Congress. These recommendations will supplement legislation my Administration submitted to the Congress in November, 1969 to provide comprehensive management by the States of the land and waters of the coastal zone and in April, 1970 to control dumping of dredge spoil in the Great Lakes.

The program proposed by the Council is based on the premise that we should take action before the problem of ocean dumping becomes acute. To date, most of our energies have been spent cleaning up mistakes of the past. We have failed to recognize problems and to take corrective action before they became serious. The resulting signs of environmental decay are all around us, and remedial actions heavily tax our resources and energies.

The legislation recommended would be one of the first new authorities for the Environmental Protection Agency. I believe it is fitting that in this recommended legislation, we will be acting—rather than reacting—to prevent pollution before it begins to destroy the waters that are so critical to all living things.

RICHARD NIXON.

THE WHITE HOUSE, *October 7, 1970.*

## PERMISSION FOR SUBCOMMITTEE ON ELECTIONS, COMMITTEE ON HOUSE ADMINISTRATION, TO SIT DURING GENERAL DEBATE TOMORROW

Mr. HAYS. Mr. Speaker, I ask unanimous consent that the Subcommittee on Elections of the Committee on House Administration may sit tomorrow morning during general debate.

The SPEAKER pro tempore. It there objection to the request of the gentleman from Ohio?

Mr. HALL. Mr. Speaker, reserving the right to object, does the gentleman appreciate the fact that unanimous consent authority has been given to convening the House at 10 o'clock tomorrow morning?

Mr. HAYS. The gentleman is aware of